Teaching legal writing in a South African context: An evaluation of the work of student tutors in assisting with the development of legal writing skills in first year law students at one South African law school.
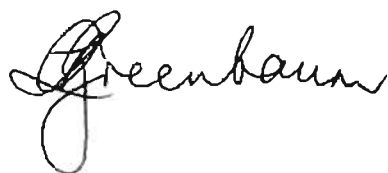
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Preface

I hereby certify that the following dissertation is entirely my own original work and has not been previously submitted for examination. All sources used in the preparation of the work have been cited and acknowledged by me.

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Abstract

In this study, an analysis and an evaluation of the feedback comments made by fourth year law students on legal writing assignments of first year law students is made. The purpose is to formulate a sense of the student tutors' shared capacity to critique legal writing, and thereby assist in developing the writing skills of first year students at one South African law school.

A review of the literature on legal writing from the United States of America suggests that there has been a shift away from the current-traditional paradigm, which focussed on formal features of legal writing. The 'new legal rhetoric' approach, based on research and theoretical understandings which view writing as a recursive process, has now been widely adopted. This approach has been further extended by the 'social perspective,' which acknowledges writing as a social practice, which novice writers can learn from experts within the legal discourse community. Finally, critical reading and writing theorists propose a politicised approach to writing, encouraging critiques of alienating discourse practices.

Legal writing pedagogy in the United States has reflected these changing theoretical perspectives. The 'process' approach to teaching writing requires intensive writing instruction and practice by novices. Several drafts of assignments are submitted, and instructors respond with appropriate written (and verbal) feedback comments, which are intended to motivate revisions.

The implications of this approach are that increased numbers of trained writing instructors are required to implement such a labour-intensive pedagogy. Resource constraints, and the difficulties of staffing such programmes, have resulted in innovative models being devised. The use of student tutors to assist in teaching legal writing inspired the introduction of a comparable tutor-training course at the University of Natal, Durban Law School, in 1999.

In this study, eighteen pieces of writing: three different examples of first year law students' writing, on which six tutors had each written feedback comments, were analysed. The number, accuracy and type of comments were tabulated, and the tone and quality of the responses were evaluated against the theoretical frameworks reviewed above. A descriptive, qualitative interpretation of their commenting practice develops a detailed sense of their successes and deficiencies.

The conclusions which emerged suggest that modifications to the tutors' education and training, and closer supervision/monitoring procedures would enhance the tutors' theoretical understandings, as well as their commenting practice. The value and viability of such a programme is confirmed by the empirical information, and indicates that student tutors can extend teaching resources, to provide the assistance necessary to implement intensive legal writing instruction. In a South African context, where academic literacy skills are so often deficient in first year students, a programme which builds capacity and extends limited teaching resources can be extremely beneficial.

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Chapter 1

Introduction to the Research Topic:

1 Introduction:

My broad objective in undertaking this study is to propose that a revised understanding of the concept of 'legal writing' be adopted in South African legal education. The pedagogical implications of such a vision would necessitate changes in teaching methodology and the deployment of additional teaching resources, to teach legal writing effectively.

In the light of financial constraints, as well as problems of identifying trained (and willing) teachers, this study aims to review a tutor-training course, initiated at Natal University in Durban (UND), in which senior law students were trained to assist in the teaching of legal writing to first year law students.

Current trends at South African Law schools suggest that a remedial 'outsourcing' approach, relying on English departments, or English teachers, is the most widely-adopted strategy used to address serious literacy problems and deficient writing skills in law students. It is based upon an assumption that writing skills are generic and transferable, and can be taught, out of context, by English specialists. Recent theoretical insights about writing as a culturally situated process, about writing as a means of developing cognitive, analytical and problem-solving skills, and the implications of such theories for legal writing pedagogy, have not informed teaching practice at South African law schools.

In an endeavour to implement the explicit teaching of legal writing in a first year law course, based on these new perspectives, fourth year law students at UND were trained as writing tutors, to assist in the labour intensive pedagogy that these theoretical views demand.

By examining the written responses of these student tutors to student writing, it is intended that a better sense of their shared capacities to critique legal writing can be obtained. The conclusions emerging from the study will provide the basis for developing guidelines, directed at improving the education, training and practice of student writing tutors. The benefit to South African law schools, of building capacity and expanding teaching resources, would enable them to address urgent issues of literacy and poor writing skills in law students.

In this chapter, the background to the study and the rationale for undertaking the research is explained. The term, 'legal writing' is defined, and traditional views about teaching writing are discussed. A survey about the teaching of legal writing at South African law schools, to set the context of the study, follows. The approach to teaching legal writing at UND is described, and the research problem is elucidated. Finally, the research questions are formulated, and the structure of the dissertation is set out.

1.1 Background to the study:

The following comment explains the central significance of writing skills for law students and lawyers:

> 'most law students will become professional writers: that is, they will make their living from writing, whether in practice or academia' (Rideout and Ramsfield, 1994:39).

Although South African legal tradition is similar to the British, oral-based procedural branches of law, and does not engage lawyers in as much writing as their counterparts in the United States, there is no doubt that advocates' and attorneys' daily work centres on effective reading, analysing and writing of legal texts, such as agreements, briefs, opinions, letters and judgments

Complaints from the legal profession, and from law teachers themselves, about the quality of law students' writing have been growing incrementally in South Africa over many years. Yet, the traditional teaching style of the large class lecture, where students passively absorb information, and are not required to engage actively, does nothing to address the situation. High staff/student ratios play a part in determining the tasks that staff members feel able to cope with, and are willing to undertake. Writing assignments are infrequent, 'teaching' writing is seldom explicitly undertaken, and students' receiving feedback on their writing is exceedingly rare in law schools (See Questionnaire responses below, pages 6-8; 72).

The introduction of 'lawyering skills' into the legal education curriculum has been a contested issue. Substantive law, or 'content-based' courses generally are emphasised and accorded greater recognition. In this context, writing is often regarded as 'something we cannot teach', a skill that students should already have mastered elsewhere, prior to entering law school.

A tendency to blame weak literacy skills on the poor secondary school education that students have received, particularly in respect of students from previously disadvantaged groups, who are now entering tertiary education in increasing numbers, merely avoids confronting the problem. Certainly, the fact that many university students now speak English as a second, third or even fourth language, has had a huge impact, on the writing skills of students as a whole, at tertiary level. Combined with an educational background that failed to develop literacy skills in either their mother tongue, or in English, (Starfield, 1994:177) this has resulted in many students being under-prepared for tertiary study. However, it would be simplistic to treat all the problems

affecting law students' writing competencies as primarily a second language, remedial issue. But, added to the non-English mother tongue speakers' difficulties, a factor that cannot be ignored is that most of these students have less cultural familiarity with the legal discourse community and the business milieu within which it operates.

The introduction of an undergraduate, four year LLB degree in 1996, has possibly exacerbated the problems relating to law students' writing skills. The new degree was devised as an attempt to address issues of transformation in the legal profession in post-apartheid South Africa. Many inequities, such as: the division of practitioners between advocates and attorneys, and the under-representation of women and people of colour, were evident. These were regarded as directly related to the different educational requirements, the apprenticeship aspects of lawyers' training, and the 'gate-keeping' nature of the professional examinations, which allow entrance to the separate branches of the legal profession. A single undergraduate law degree was heralded as the first step toward redressing some of the obvious imbalances, because it would reduce the duration, and thus the cost, of the tertiary educational requirements.

From a teaching perspective, the new degree has necessitated a paradigm shift. Some of the immediate adjustments required in revising the law curriculum were:

- to resolve the dilemmas arising out of who should take responsibility for teaching the many skills required for academic success at university, to students emerging fresh from an often inadequate school system;

- to devise pedagogical approaches which facilitate the introduction of learners and particularly, many second language learners, to academic literacy practices and to legal discourse.

1.2 Rationale for the study:

A preliminary reading of the literature on legal writing informed me that there had been major changes in the approach to teaching writing in the United States during the nineteen eighties (Phelps, 1986:1093). This was prompted by new understandings about the writing process, writing within a rhetorical context, the deeper thinking processes that are refined through recursive writing practice, and the recognition that writing is a socially-situated practice (Rideout and Ramsfield, 1994:68,72).

The implications of embracing these theoretical perspectives are, that in order to teach legal writing effectively, intensive and regular writing, and revising of multiple drafts of written work, have to be undertaken by students, and meaningful feedback given by trained instructors (Gale, 1980:321-2; Rideout and Ramsfield, 1994:68,72).

However, in relating these insights to the context of teaching legal writing to South African students, it is obvious that our situation differs substantially from

those described in the wealth of comparative literature available. In the United States, law students are typically postgraduate students who have already taken college courses in composition and writing. Considering the factors, which complicate our teaching context (outlined above: pages 2-3), the task of teaching legal writing effectively requires a proportionately greater commitment by law schools.

As a minimum, a change in perspective, by those responsible for allocating resources, as well as additional staff development and training, would be required. Budgetary constraints, and the lack of appropriately qualified (and willing) full time teachers, make this kind of teaching an extremely expensive and almost unattainable goal.

Even in the United States, an assessment of a legal writing programme at the University of Chicago Law School, was described by the Dean, Professor Kalven, as:

> 'expensive in money, time and energy. It is perhaps something of a luxury. But after fifteen years of working with it and observing it in action, we are inclined to the view that it is the sort of luxury that no first-rate law school can afford to do without' (1948: 18).

1.3 The Meaning of the term 'Legal Writing':

In using the term 'legal writing' in this study, it is intended that not only are the general elements of (grammatical) literacy evident, but also that the writer demonstrates an awareness of rhetorical sensitivity (to audience, purpose, context) and an appropriate use of technical vocabulary (Rideout and Ramsfield, 1994:58).

Phelps describes legal writing as:

> 'professional writing that has specific and definable aims and audiences' (1986:1092).

Legal writing implies an awareness by the writer of analytical schemata (Mitchell, 1989:277), an understanding of rhetorical structure and certain stylistic conventions, and an appropriate use of legal terminology, within a range of fairly well-defined genres of legal texts, such as: judgments, legal opinions, heads of argument and formal communications between members of the discourse community, as well as written communications to non-members, i.e., clients (Benson, 1985:523).

The 'social' perspective of legal writing regards it as a context-based, social act, in which there are a specific set of communicative practices, shared by the legal discourse community, and thus all novices need to be explicitly educated into the conventions of that community (Swales, 1990:9; Rideout and Ramsfield, 1994: 56-58).

1.4 Traditional views of Legal Writing:

In the past, legal writing was often regarded as a talent - typically some students 'had it' and some never 'got it' when it came to writing. Lecturers' own experiences as students provokes them to readily respond to suggestions of teaching writing that 'no one ever taught us legal writing'. But, perhaps it is for that very reason that such legal educators happened to have become academics: they were fortunate enough to have easily assimilated the necessary writing practices of the discourse, without needing explicit instruction (Kissam, 1989:433; Rideout and Ramsfield, 1994:40).

In South Africa, many law teachers would have enjoyed a privileged education. It is likely, that in their primary (home) discourse, they would have enjoyed more exposure to, and cultural familiarity with, academic and legal discourse (Gee, 1990:151). Their tertiary education was also likely to have encompassed an undergraduate degree, which involved significant writing practice in other academic discourses. It is these educators who now are unconvinced that they should be teaching writing.

Other traditional views suggest that 'good' writing is a generic and transferable skill that students should master elsewhere in the university. This is based on the assumption that writing should not have to be taught by law teachers, and that legal writing is ancillary to learning 'real', 'black letter' law. Others consider that legal writing is primarily legal drafting, which should be taught by practitioners, and that it is not an intellectual pursuit (Rideout and Ramsfield, 1994:42-48).

As Williams comments:

> '(G)ood critical thinking/writing...in a particular field does not simply happen as a result of a person's mind maturing, but it is a consequence of experience gathered by working with others more experienced in some discourse community'.

> ...'In short, it is not at all obvious that critical thinking (and writing) can be learned as a generic skill. Rather it must be taught in a particular field, embedded in a particular community of knowledge' (1991:9,11).

It seems that South African law teachers have not appreciated the link between thinking and writing within a discourse community, which underpins Williams's views. They resist taking on the challenge of developing effective pedagogical strategies, based on recent writing theory and research. By ignoring studies that establish the centrality of language to developing cognition within a specific field, and that writing is an integral part of cognitive development, they shy away from developing both students' analytical and writing skills (Emig, 1977:124-6; Flower and Hayes, 1981:369).

1.5 South African Universities and the Teaching of Legal Writing:

The following section is included as background information, to set in context the prevailing understandings about legal writing that most South African legal educators share. It is based on responses to a preliminary, exploratory questionnaire (Appendix 1), circulated to deans of law schools in South Africa in May 2001.

My aim was to obtain a general survey of law students' writing skills and ascertain the current state of legal writing teaching. The overall impression gained through the responses was that in most universities, first year law students are required to participate in a law course or an English course, taught by English specialists, in the hope that this will remedy their writing deficiencies at the beginning of their studies.

Replies from twelve law schools in South Africa, relating to approximately 11280 law students, indicated that legal academics perceive that students entering law school generally have basic (weak) communicative skills (Question 2). At one law school only, the view was expressed that only 50% of the students were classified as such, and at another school, students were rated as having 'acceptable writing skills'.

Concerns about student writing (Question 1) were expressed as:

- 'poor grammar, inability to express themselves clearly';
- 'very poor basic schooling, in any language, especially English';
- 'some students have very poor writing skills';
- 'the writing skills of some students…are non-existent, also their reading comprehension and analytical skills tend to be very poor';
- 'very poor levels generally';
- 'quality of language usage';
- 'lack of proficiency in English, lack of skills in organising thoughts and ideas, bad grammar, inability to express themselves';
- 'considerable concerns';
  an interesting view expressed was that:
- many law students don't regard writing as important'.

These comments reflect concerns that focus mainly on basic literacy and surface-level grammatical skills as well as an understanding of 'writing' as grammatical proficiency.

In response to a question about curricular innovations that explicitly address concerns about student literacy, in the law degree itself, (Question 4) the solutions mentioned could be classified under three general categories, which were:

1. introduced or redesigned the first year (law) course to incorporate writing skills:

    - 'introduced a compulsory first year course';(2)

- 'revamped our first-year course to focus on essay-writing, précis, grammar, in conjunction with the Student Services Bureau';(1)
- 'a year long module in communication skills, designed by members of the English department and the Law faculty';(1)

2. extended the teaching of writing over several courses:

- 'but for a lack of time, we would like to extend it over two or three years';(2)

3. established an 'outside resource' to support student writing:

- 'a writing centre, run by student tutors, gives assistance'; (1)
- 'we employ three final year students as writing assistants';(1)
- 'we have employed four English 'teachers' who vet each essay, assignment for language, grammar'
- 'a compulsory requirement that students take one(1) or two(1) English courses in the first (two) years'.

These strategies or curricular interventions do not go further than addressing basic literacy issues. Issues of discourse conventions, legal analysis and other structured written practice in different genres of legal writing are not included, other than one school that has:

'introduced a new course in Legal Communication and Research Methodology taught by law lecturers (currently in second semester of first year, but it will be presented in the second semester of third year in 2002)'.

In response to a question as to who should be responsible for teaching legal writing, (Question 5) answers varied from: 'a dedicated tutor', 'law lecturers', 'lecturers, assisted by experts/educationists', 'English teachers and Classics lecturers', 'preferably law staff, but now, teaching staff are mainly from the English department', 'preferably a jurist with a background in linguistics', 'people with experience in the field' and 'a lawyer who is passionate about it.'

These answers seem to reflect the difficulties of staffing legal writing courses, and a lack of clear vision surrounding what it is that is to be taught. Law schools in the United States experienced this dilemma during the nineteen eighties: the problem of identifying qualified legal writing teachers, who would have a disproportionately heavy workload, without the commensurate recognition or remuneration (Gale, 1980:319; Rombauer, 1980:398; Levine, 1995:531-535; Levine and Stanchi, 2001:552).

This difficulty was more directly stated in the responses to a subsequent question, which asked: what were considered to be obstacles or constraints to teaching legal writing in the LLB curriculum? (Question 7)
Statements such as:

- 'difficulties in securing suitable teaching staff, lack of appropriate teaching materials';
- 'person-power/finance';

- 'lack of theoretical knowledge on the part of lecturers, lack of resources';
- 'poor secondary schooling seems to be an almost insurmountable obstacle to teaching writing';(2)

- 'the quantity of substantive law that must be covered';
- 'insufficient space/time/resources'.

A recurring issue raised in the American literature was mentioned:

- 'low prestige of (writing) courses' or 'the attitude of some students who regard language as nothing more than a medium of communication';

A concern that teaching writing would be at the expense of substantive material, and a lack of resources/funds/qualified teachers seem to be the initial, almost instinctive justification for not attempting to teach legal writing.

Most respondents to the questionnaire (4) recognised a need to teach writing skills throughout all years of the law degree, while the others limited their approval of teaching writing to the first year of studies. My impression is that concerns about 'covering enough substantive content' underpin the latter view. These comments confirm for me, the existence of a 'traditional' view of writing, in which a focus on remedial grammar drills, regardless of the writing context, can fix most student writing problems in one year (Rideout and Ramsfield, 1994:42).

Some variation in opinions was evident in the distinction drawn between 'language usage' or 'basic writing' teaching, and teaching of 'legal writing skills'. The respondents who expressed the latter view seemed to believe that general literacy training should occur in the first year, followed by more intensive legal writing from the second/third year (3).

A popular strategy adopted by law schools to address student difficulties with writing has been to 'sub-contract' the teaching of English grammar out to English departments in universities. The premise is that law students would acquire the necessary generic 'literacy' skills there, which they could simply adapt to the criteria specified in legal writing assignments. Yet it seems that courses teaching grammar, syntax and generic skills, located out of context, with no explicit focus on the demands of writing within the discipline, do not meet the needs of law students (Williams, 1991:10).

D'Eloia comments:

> 'One of the more dispiriting discoveries of the (Basic) Writing teacher is that the study of grammar has been shown to have rather negligible effects upon student writing...If there is one conclusion to be drawn which cuts across all the studies, it is this: the more time spent analysing grammar as grammar, the less time spent writing; the less time spent writing, the less the improvement in the written product.' (1981:225).

Thus, it seems that recent research in writing pedagogy has had little or no impact on law schools in South Africa. Little is being done to directly address the real concerns expressed about students' writing skills. Budgetary constraints are regarded as an insoluble obstacle to innovation. Traditional views about generalised literacy skills, and a focus on teaching 'content', prevail amongst legal educators. These attitudes impede the adoption of new understandings that would support the introduction of approaches which teach students explicitly how to enter the discourse community and learn to write 'as lawyers do'.

1.6 The Approach at the University of Natal, Durban Law School:

At the Durban Law School, the teaching of legal writing was identified as one of the 'skills' outcomes of the new post-1996 LLB programme. All first year law students are required to enrol for two courses in English in their first year of study, and in their first year law courses (one law course in each semester), a concerted effort has been made to introduce students to legal discourse. It was intended that students should obtain practice in various types of legal writing throughout the four years of the degree, but in practice, this has not been implemented.

A 'process' approach to legal writing was adopted in the first year courses in 1998. Intensive writing practice, in the form of first and final drafts of most written assignments, on which detailed written feedback was given, was implemented. By explicitly teaching the conventions of certain genres of legal writing, and providing samples, such as models of case summaries and problem-solving answers, students were initiated into basic legal writing practices. Assignments were based on 'real' legal tasks, or simulations of authentic lawyers' work, e.g., writing a legal opinion, preparing an appellate argument on sentencing. Regular one-to-one conferences between the writing instructors and their students were also instituted.

This approach to teaching writing is based upon the assumption that writing can be taught to students, as it is learning how to write within the conventions and practices of a professional group (Rideout and Ramsfield, 1994:59). A strategy of gradual inculcation of novices into the conventional discourse forms and lexis was designed, premised on the notion that students will not acquire these crucial skills by exposure, 'osmosis', or simply by reading legal texts. Acceptance of this principle is particularly critical in the South African context, where the diverse body of learners who comprise our student population, enter tertiary educational institutions with enormously varied literacy skills and levels of preparedness for tertiary study.

However, as mentioned above, the labour intensive nature of teaching legal writing effectively (Rombauer, 1980:410; Gale, 1980:319-320; Gross, 1980:377) would strain the teaching resources of most law schools. In addition, many law teachers themselves argue that they are not adequately trained to teach writing, as indicated in the responses to my questionnaire (see page 7 above). It is also clear that no 'quick-fix' single course can hope

to address the complex questions surrounding the teaching of such a central 'lawyering' skill.

Despite all these obstacles, or perhaps because of them, a tutor-training course, Teaching Legal Skills, was introduced at Natal University in 1999. Inspired and assisted by the ideas and visits of eminent legal writing expert, Professor Brook Baker, Director of the Legal Practice Programme at Northeastern University School of Law, in Boston, the course aimed to train tutors to critique writing, amongst other teaching functions. The impetus arose out of a need to increase teaching resources, and indirectly to build capacity. The design of the course was largely modelled on a similar course taught at Northeastern University. Materials from Georgetown University Law School also provided helpful guidelines for the tutor training.

The aim of Teaching Legal Skills was to assist in and facilitate the teaching of legal writing to first year students. The theoretical content focussed on materials related to: providing feedback on legal writing and conducting writing conferences. Included also were: teaching and facilitation skills for small groups, the use of role plays in teaching, some theoretical perspectives on assessment, student learning styles, lesson planning, and developing reflective skills in a multicultural teaching context.

An in-depth evaluation of these tutors' capabilities to give feedback on legal writing would be an initial step in establishing the effectiveness of the tutor-training course, to assist with the teaching of legal writing.

1.7 The Research Problem:

The problem, in the context of tertiary education in South Africa is thus, that even if traditional views about writing change, the literature suggests that the cost of teaching writing is prohibitive. Although there is a particularly pressing need to incorporate legal writing teaching into the university curriculum, the resource implications are problematic.

The purpose of a tutor-training course, introduced at UND, was primarily to train writing instructors, who could assist in teaching legal writing to first year students. The tutors' course aimed to develop various other pedagogical skills, but particular emphasis was placed on the critiquing of written papers. However, scepticism amongst the teaching faculty, about the abilities of fourth year students to undertake such important work, was expressed.

1.7.1 Research Questions:

In an endeavour to evaluate methodically the tutors' capacities for this role in teaching legal writing, the following research questions emerged:

(1) By reviewing the current approaches to teaching legal writing in the United States, both in terms of theoretical framework and teaching models, can we arrive at a practicable, theoretical and teaching model,

that could be adapted for application to teaching legal writing in a South African context?

(2)   What are the nature, accuracy and effectiveness of feedback comments that student tutors, who have participated in the UND tutor-training course, have been able to make on the writing of first year law students?

(3)   What conclusions can be drawn, and what recommendations and guidelines for improving the critiquing skills and techniques of student tutors, can be made, following upon the detailed study of their commenting practice?

1.8 The Structure of the Dissertation:

The first part of this study aims to review a variety of theories on teaching legal writing, which have shaped teaching practice in the United States. The influence of these perspectives is reflected in the theory that has developed to underpin commenting practice. A review of the body of literature and studies on the purposes, effects and techniques of responding to writing will establish a framework for the research study. Staffing models, which have been adapted to implement new pedagogical approaches, will also be examined. Models, in which student assistants have been trained to relieve teachers of some of the time-consuming task of commenting on student papers, are of particular interest. Two tutor training courses will be contrasted with the design of the Teaching Legal Skills course at UND.

In the second part of this study, an exploratory, interpretive analysis and a critical evaluation of samples of feedback comments on student legal writing, from six different tutors, will be conducted. The samples were submitted as part of the tutors' assessment portfolios in 2000. This detailed evaluation of the tutors' work should give an accurate sense of student tutors' shared capacities to assist in the teaching of legal writing. The adequacy and pervasiveness of the tutors' training on commenting should become apparent and make possible an exploration of interventions to address those aspects of their practice that undermine the pedagogical goals of the course. Insights that emerge from the study will facilitate developing recommendations for improving the education, training and practice of student legal writing instructors.

The wider implications are that by accrediting and improving student-tutoring activities, based on the guidelines which the research findings support, a contribution toward building capacity and enhancing limited teaching resources, in times of stringent budgetary measures being imposed in tertiary institutions, may be achieved.

Chapter 2

Literature Review and Theoretical Framework:

2 Introduction:

In this chapter, three topics will be considered:

1. A chronological review of the literature, and scholarship, that has been produced on the subject of teaching legal writing: most of the available literature emanates from the United States, where the influences of composition theory, and reading and writing research, have had a significant impact on legal writing pedagogy. The literature review will establish the theoretical framework that has shaped the teaching of legal writing. This, in turn, informs the theories that underpin the writing of feedback comments on students' legal writing, which is the main focus of this study.

2. A review of theoretical perspectives on responding to student writing follows: some theoretical views, studies and literature, identifying the purposes and techniques of providing effective feedback on writing, will be discussed. The aim will be to establish a framework, against which the capabilities of the student tutors, that form the central analysis of this study, can be evaluated.

3. A review of the teaching models used in teaching legal writing: the implications emerging from the above scholarship are that various teaching models have been devised, to address the significant time and work demands of writing teachers. The use of student tutors in assisting with commenting on drafts of writing will be reviewed. This is followed by a review of two tutor training courses in the United States, upon which the tutor-training course at UND Law school was based.

2.1 Legal Writing Pedagogy:

In summarising the early development of legal writing (and research) courses in American law schools, Rombauer explains:

> 'The early "research and writing" courses were what the name implies, a joinder of bibliography instruction with writing experience, frequently with an added mixture of remedial objectives related to deficiencies in legal education perceived during the post-World War II ferment' (1973:539).

The original bibliography/writing courses had been introduced at law schools from 1906 onwards, but it was as late as 1947 that separate, basic 'legal writing' instruction was introduced (Rombauer, 1973:540). Rationalisations for this innovation were that writing inadequacies in law students became more obvious because of the increased demand for advanced education during the nineteen thirties. Cultural changes, which resulted in larger and

more diverse classes at universities, also contributed to this innovation (Rombauer, 1973:540).

Legal educators' concern about law students' thinking skills resulted in a questioning of traditional teaching methodologies. Many law schools introduced Legal Method classes, which combined comprehensive problem-solving exercises, requiring 'the integrated use of intellectual skills with research and writing' (Kepner, 1952:99). Courses tended to emphasise extensive introductory writing at somewhat of a remedial level and often used 'low-cost' abnormal staffing methods, including librarians and students, to teach these first year Legal Writing and Research courses (Macauley and Manne, 1959:388).

The effect of this approach was to discredit the intellectual component of teaching writing. In the long term, this has lead to a continuing sense of 'lesser' academic value being attached to writing courses, and a concomitant reluctance to remunerate adequately or promote the staff who undertake such teaching (Levine, 1995:531; Rideout and Ramsfield, 1994:37-8). The consequences on the quality of teaching, the sense of insecurity, and the low morale of writing teachers, as well as on student perceptions, have been entirely negative. The effects on the allocation of resources, and on the development of long-range vision and continuity in writing courses have also been deleterious.

As late as 1980, Gale records attitudes toward legal writing courses as:

'faculty disdain for the subject matter and administrative dislike of the expense. There is a general recognition that teaching law students to write well in and about the law requires an extraordinary amount of time and work - and a general suspicion that the end is not worth the means ' (1980:317-8).

During the nineteen eighties, new insights are detected in the academic journals about theories of legal writing that effected a shift in pedagogy. Responding to pessimistic criticism about the state of legal writing, Phelps (1986:1094) proposed a 'new legal rhetoric' to develop a 'substantive pedagogy', that would define legal writing, and effect a paradigm-shift, turning legal writing teaching into teaching writing as conversation. Influenced by new views on teaching writing, such as those described by Hairston (1982:76), Phelps recommended a move away from the emphasis on form and the composed writing product, typified in the 'current-traditional or formalist paradigm'. She suggested a move toward a 'new rhetoric' methodology, which teaches students to focus on the aim of their legal writing, and on analysing the audience for whom they are writing, to produce effective discourse. As Berlin (1988:53) commented:

'writing teachers became increasingly convinced that the theoretical foundation of the current-traditional paradigm was naïve and reductive'.

The view proposed was that writing should be regarded as a process that can be analysed and described; it is seen as: 'a rational and intuitive process and therefore it can be taught' (Phelps, 1986:1096). Linguistic and other writing research, such as protocol analysis, initially used in cognitive psychology (Flower and Hayes, 1981:367), work on rhetorical invention, such as Rohman's research on pre-writing (1965:106), and Pike's tagmemics (as cited in Phelps, 1986:1097), should inform the development of the new legal writing pedagogy.

Rideout and Ramsfield observe:

> 'the process perspective also entails a developmental view of writing that strongly corresponds to a developmental view of legal education generally' (1994:53).

This approach implies that in initiating law students into the 'new (legal) discourse community', teachers must assist students to:

> 'find their legal personalities by mastering the new tribal speech, in a way that emphasises law's communal and conversational nature' (Phelps, 1986:1091).

Applying the principles of the new methodology, Phelps recommended techniques to help students during the pre-writing or planning stage. Assignments that simulate realistic situations and real rhetorical situations, such as writing a client letter, or using 'real' case files, should be devised. Students would then receive feedback on their writing during the various stages in the composing process, and revising takes on a new significance as students develop their own valid professional and personal voices, to 'engage in the ongoing conversation of law' (Phelps, 1986:1102). At UND, these recommendations were implemented in designing the first year assignments and are reflected in the samples selected for analysing tutor feedback, in Chapter 4.

The role of the reader and the writer attained a new importance and writing was now viewed as a disciplined, recursive process. In writing creatively, the writer alternates between 'the retrospective' posture, and a 'projective' one (Perl, 1988:116-7). The writer makes meaning through various tacit processes, like memory searching, perception and value judgements, as well as automated processes, such as writing grammatically correct sentences (Flower and Hayes, 1988:92).

The acquisition of these automated processes relate to having 'schemata' or:

> 'interpretive frameworks, built out of past knowledge and experience, that allow us to make sense out of the bits and pieces of information presented to us in given situations' (Mitchell, 1989:277).

Achieving expertise in a discourse, may involve the accumulation of certain types of experiences, which become 'expert schemata'. These frameworks

provide information about the discourse practices and conventions that a novice does not yet have and needs to be explicitly taught (Mitchell, 1989: 279).

Kissam (1987:141-3) echoes many of the criticisms regarding the traditional methods of teaching legal writing. By insisting that writing should be taught by 'English experts', either prior to law school, or in remedial classes, law professors have maintained an emphasis on oral communication and an 'oral culture' in law schools, which reinforces their authority as experts. The rationale of limited funding and resources for teaching writing, attributable to high staff/student ratios, has always been raised. But, resistance to change in the legal academy generally is a more accurate explanation of their reluctance.

These attitudes have contributed to a 'denial of the independent value of the writing process' and have kept the teaching and learning of writing separate from other aspects of legal education (Kissam, 1987:138-9). This acceptance of a limited, 'instrumentalist' view of writing, as opposed to requiring students to develop the skills implicit in 'critical' writing, fails to take into account:

> 'the fundamental point that the writing process itself can serve as an independent source, or critical standard, that alters and enriches the nature of legal thought (Kissam,1987:140).

This 'epistemic' approach is sometimes regarded as a corollary of the process perspective, because it emphasises writing as a cognitive process. Writing is seen as an integral-part of thought, and a means of generating knowledge. By engaging in critical legal writing, the text producer is constructing law through her written analysis, synthesis, application of law to facts, and the development of written arguments (Rideout and Ramsfield, 1994:54).

A seminal paper by Fajans and Falk (1993:163) proposed that 'strong' writing depends on students being taught to read legal texts closely and critically. Reading as a process should not be only for retrieving knowledge, followed by writing, to 'summarise and paraphrase' the work of judges and other legal writers. Reader-response theory was enlisted as a tool to assist students to 'find something to say'.

A debate arose around whether novices require socialisation into the 'basic knowledge structures' and the conventions of the discourse, before they can undertake sophisticated and critical reading and writing in the discourse, or whether this socialisation is, in itself, a constraining factor. Socialisation first, was said to encourage conformity and replication, thereby discouraging critique from within the discourse community (Fajans and Falk, 1993:188-9).

Williams (1991:19-23; 24-30), a proponent of the view that sophisticated reading, writing and thinking is impossible prior to socialisation into a community of knowledge, presented a scheme to depict how novices in legal discourse progress through different stages in their writing. Using the work of cognitive developmental psychology, including Piaget, Perry and Kohlberg, as

well as analyses of critical and expert thinking, he described the movement is from concrete (the 'pre-socialised' state), to abstract thinking, (the 'socialised' stage), echoed in the progress from a state of deference to authority, to an evolving ability to manipulate higher-level abstractions (the 'post-socialised' stage).

Critical thinking and imagination should be regarded as a set of skills that can be deliberately taught and learned from experts within in a discourse community. It is predictable that novices will experience a cognitive overload when entering a discourse community, and they may temporarily lose skills they had once mastered. As teachers, we need to develop 'meta-cognition' in our students, to help them become aware of their own behaviour (Williams, 1991:28-30), which Mitchell (1989:293) also describes as: the need 'to articulate for students their progress in the acculturation process'.

The third recent perspective on legal writing pedagogy that has been articulated is the 'social perspective' (Rideout and Ramsfield, 1994:56-61) or the 'social construction theory' (Berger, 2000:73-4). It seeks to broaden the process approach, by acknowledging that the social context within which writing takes place both shapes and constrains it. Williams's (1991:16-18) model accords with this approach, as he too views writing as a social practice, requiring the initiation of novices into the conventions of the community by experts.

The most recent influence on teaching legal writing has been the voice of writing professors such as Baker (1997) and Sossin (1995), who advocate more critical literacy practices, to promote an awareness of the potential for a politicised approach to legal writing pedagogy. The seeds of such an approach are detected in earlier views, such as:

> 'every pedagogy implies a "set of tacit assumptions about what is real, what is good, what is possible, and how power ought to be distributed" ... Teaching writing is inherently political, and how we perceive the purposes of writing vis-à-vis the academic community will reflect our political stance' (Berlin, 1988:9).

Baker (1997:561) advocates that while legal writing instructors should smooth the entry of students into the discourse community, they should empower them with a critical consciousness that will encourage 'transformative' and critical discourse practices both within the Academy and in practice, to achieve some of the goals of social justice.

Sossin (1995:883) adds that legal writing and research assignments should facilitate both the assimilation and critique of legal discourse:

> 'legal research and writing ought to be exposing students to the promise and the problems of legal discourse' (1995:885)

She describes the texts and subject matter that students write about as setting 'powerful norms', the selection of which cannot be seen as neutral.

Traditional legal writing pedagogy 'embodies a particular claim to power and knowledge' that has disadvantaged marginalized groups on the basis of class, race and gender, without giving a voice to 'ordinary understanding' or everyday knowledge (1995:898-9).

2.2 Theories of Feedback on Legal Writing:

2.2.1 Introduction:

In this section, various theoretical perspectives about the purposes and teaching goals, of providing written feedback comments on students' writing, will be reviewed. Some research studies and practical guidelines, on what experts consider to be helpful comments to students, as well as techniques to manage the task successfully, will be discussed. This section provides a review of the literature and scholarship on the topic of feedback, which will inform the detailed study of tutor feedback, in Chapter 4.

2.2.2 Theoretical Perspectives:

In discussing the emerging traditions of teaching writing (albeit as a teacher of English as a second language), Raimes comments:

> 'with a number of approaches to teaching writing to choose from, teachers are faced with a similar variety of ways to respond to students' writing. Since a response on a student's paper is potentially one of the most influential texts in a writing class, teachers are always concerned about the best approach' (1991:420).

The close link between the theoretical views that underpin approaches to writing pedagogy, and approaches to responding to writing, is an obvious one. Zamel (1986:79) expresses the view that writing teachers' responses to student writing reveal the assumptions they hold about writing, while Ramsfield (1997:236) notes that the way in which teachers respond to student writing defines how they usher students into the discourse community.

Lamberg describes comments to students as 'feedback', which he then defines as:

> 'information on performance which affects subsequent performance by influencing students' attention to particular matters so that those matters undergo a change in the subsequent performance' (1980:63, as cited in Griffin, 1982:299).

This recognition of the importance of responses to writing and the assumptions that underpin them, are not, however, matched by elucidatory theoretical frameworks in the available literature. Sommers (1982) notes some of the contradictions existing in the literature: responding to and commenting on student writing consumes the largest proportion of writing teachers' time, commenting is the most widely used method for responding to student writing, and yet it is the least understood, for:

'we do not know in any definitive way what constitutes thoughtful commentary or what effect, if any, our comments have on helping our students become more effective writers' (1982:148).

In outlining the theory that has developed on the topic of responding to student writing, Griffin (1982:296) identifies three major components that have become the foci of concern: (1) teachers' orientations; (2) teachers' verbal responses; and (3) students' reactions to teachers' responses.

Regarding teachers' orientations, it is clear that each teacher reacts differently to a piece of writing, because the relationship between a reader and a text is an interactive one. The reader's own experiences, training and expectations determine the meaning that she constructs from the text, and thus they influence her response. Other factors contributing to teachers' responses are the features in the text to which the reader instinctively responds first: for example, content, organisation, mechanics or sentence structure (Freedman, 1979:162).

One of the difficult tasks facing writing teachers is to strike a balance between responding to errors in form, and errors in content. The 'process approach' to writing clearly emphasises feedback on writers' ideas in first drafts, in order to motivate revisions (Cohen, 1978:605). In a study, comparing the responses of eight experienced English teachers on a set of student papers, to the responses of seven inexperienced teachers from departments other than English, Siegel (1982:303-5) observed that:

- experienced teachers marked three times more content errors than form errors;
- they seemed to have a sense of which errors were important enough to mark;
- new teachers made significantly more markings on papers;
- the English (experienced) teachers' average ratio of content errors to form errors was 6:1, while the ratio of content to form errors was 3:4 for the inexperienced teachers.

The second theoretical dimension identified by Griffin, is how teachers verbalise (express) their reactions to student writing. Whether teachers focus on extrinsic qualities of writing (ideas), or on intrinsic aspects (style and grammar), and whether comments are descriptive or evaluative, depends on their assumptions about the nature and function of writing. Halliday's linguistic theory, which describes the three functions of adult language as: ideational, interpersonal, and textual, would accommodate a system of responding that 'does justice' to the meaning contained in written language, by dealing with all three of these functions (Gere, 1980:58).

Thirdly, students' responses to teachers' comments should inform the commenting techniques that teachers use. Effective comments are those that combine the need to be responsive to the writer, as well as achieving the aim of the teacher, to promote revision. Research on the composing process and

on the revision strategies of student writers, compared to those of experienced writers, suggests that experienced writers differ, in that they regard revision as a critical part of the writing process (Sommers, 1980: 378). Novice writers consider revision as 'cleaning up' a text. Based on this understanding, teachers must adapt their commenting strategies to encourage students to revise more extensively (Griffin, 1982:301).

The main function of feedback, according to Sommers (1982:148), is to 'dramatise the presence of a reader' for the student writer, in order to convey to the writer whether the text communicates the meaning that the writer intended to its audience.

A related perspective on feedback was developed by Purves (1984:259), in his attempt to characterise the role of the teacher as a reader of student writing, at various stages of the student's writing process. Purves bases his 'reader roles' on his own categorisation of the four types of comments made generally by teachers of writing. The types are: those that relate to (a) quality and development of content; (b) organisation and presentation of content; (3) style and appropriateness of tone; (d) interest or personal response to the text.

The 'reader roles', adopted by teachers responding to student writing, may be that of:

(1) the common reader, when the teacher reads and responds as an ordinary reader;

(2) proof-reader; (3) editor; (4) reviewer; (5) gatekeeper; - each of whom is reading to respond with some form of judgment;

(6) critic - who analyses the text with an aesthetic approach;

(7) anthropologist/linguist/psychologist – where the teacher reads with the purpose of analysing the text and its structure, in relation to the writer's level of growth, social group, or cognitive or emotional behaviour;

(8) diagnostician / therapist – where the teacher reads a paper in order to determine whether the writer requires some sort of assistance or treatment.

These roles can be instructive in setting priorities as to the focus of feedback comments, in a piece of writing. The reader's role varies according to whether she is reading to address content errors (thinking/discipline knowledge) in a first draft, or whether the priority is form and language polishing (grammar/punctuation) in a final draft of writing.

Purves suggests that:

> 'in the classroom, however, the teacher may pursue any of these roles, and at times may even perform all of them in reading a particular student paper' (1984:262).

What is significant about this view is that it emphasises the constant demand on writing teachers to adapt their responses to the varying needs of their different students, at different stages during the writing process. Purves (1984:263) recommends that a good teacher would consciously adopt each of the above eight 'reader roles' or a combination thereof, depending on three considerations, which are:

(i)   the stage at which the student text is being read – a first draft, a revision, or a final draft;

(ii)   depending on the type of writing – an impromptu or long-term written assignment; and

(iii)   the attitude of the student toward feedback comments.

The formalist or current-traditional paradigm of writing dominated legal writing instruction until the nineteen eighties. It was characterised by a focus on the finished written 'product', and an emphasis on the formal features in a text. In line with this instrumentalist view of legal writing, which anticipates a single correct answer in its instructional approach, feedback to students emphasised abstract grammar rules, and the correction of superficial errors of diction and syntax (Rideout and Ramsfield, 1994:42; 50).

The shift toward a 'process-oriented' approach necessitated a revised view of what constitutes effective feedback on student writing. By requiring students to submit at least two drafts of their work, writing teachers had to adapt their responses to the appropriate stage of the writing process at which their intervention was taking place, and to write formative feedback comments that regard the text as unfinished (Sommers, 1982:155).

Horvath (1984: 243) describes formative evaluation (and responses), as those that treat writing as:

> 'part of an ongoing process of skills acquisition and improvement, recognising that what is being responded to is not a fixed but a developing entity' (1984:244).

It is this type of feedback, which is different from summative comments that justify a grade awarded, or judge a paper as a finished product, and which rank the student text against the teacher's personal expectations of the text. Teachers appropriate the writer's text by correcting and rewriting extensively. They show:

> 'students that the teacher's agenda is more important than the student's own' (Brannon and Knoblauch, 1982:158-9).

'Incentive is vital to improvement' but by denying students control of their own writing, incentive to improve is reduced. When teachers emphasise the writer's ideas and communicative goals, instead of their own idiosyncratic models of how writing ought to be, writers are encouraged. Emphasising

revision instead of correction, and using questions to negotiate improvements to the writing, allows the writer to assume control of her writing (Brannon and Knoblauch, 1982:161-3).

One of the most critical goals of feedback that formative comments can achieve is to encourage, motivate and create an atmosphere of collaboration between the person critiquing the writing and the writer (Horvath, 1984:248; Sloan, 1977:33). 'Coaching' is a term often used to describe the relationship that should develop between teacher and writer during the writing process (Kissam, 1987:168-9).

Lees (1979:372) has suggested a helpful taxonomy, in hierarchical order, that characterises possible formative responses to writing. The reader can:

(1) *correct*- emphasising editing;

(2) *emote*- responding on a personal, humane level as one reader;

(3) *describe*- put names to what the student has written to develop a shared vocabulary for the teacher and the writer;

(4) *suggest*- offer a possible solution to a specific problem in the text;

(5) *question*- encourage the writer to rethink what she has written;

(6) *remind*- relating the text to reference books, class discussion;

(7) *assign*- create a new writing task, setting goals (Soonpa, 1999:9).

As Horvath (1984:244) notes, the first three responses put the burden on the teacher; responses four to six move some of the burden onto the student; while a response such as (7) *assign*, develops the student's potential for improving her own paper. The latter forms accord with the goals of student-centred learning and motivate the writer to rethink, rewrite and revise her thoughts and writing.

Despite the general theoretical acceptance of a 'process' approach to teaching writing, when Sommers undertook an empirical survey of the commenting styles of thirty-five writing teachers, to determine whether their practice motivated students to revise their written drafts, her findings were disappointing (1982:149). From her research, Sommers (1982) identified that: teachers tended to appropriate students' texts, focussing attention on the teachers' concerns, rather than those of the student. They focussed on surface-level diction and grammatical errors, thereby suggesting the disproportionate importance of these errors over problems in meaning. The comments were often more appropriate to a 'finished product', than to a piece of writing which is still in the process of being developed.

In responding, teachers often gave contradictory messages, which students did not understand and they offered 'no scale of concerns' to the writer. Their comments on first drafts of writing suggested that only polishing was required to improve the paper, instead of encouraging meaningful revision and

rewriting. Teachers' comments were often vague directives, lacking specificity or clear guidance as to how the student could improve (1982:148-152).

Sommers's conclusion was that teachers need to develop comments on first drafts of writing, that provoke students to venture back into the 'throes' of the composing process, to revise their writing extensively and thereby positively improve their texts (1982:156).

Zamel's study (1986) of the written comments of fifteen teachers of English as a second language (ESL), on their students' writing, is consistent with much of the research relating to the responses of teachers of English as a first language (L1). She reported that:

> '(ESL) writing teachers misread student texts, are inconsistent in their reactions, make arbitrary corrections, write contradictory comments, provide vague prescriptions, impose abstract rules and standards, respond to texts as fixed and final products, and rarely make content-specific comments or offer specific strategies for revising the text' (1986:86).

In her conclusions, Zamel urges that writing teachers become their own researchers, by documenting their responses, and by asking students about the effects of their feedback comments. Establishing commenting priorities, which focus on the meaning of student texts, would motivate and engage students in the 'cycles of revision' (1986:95).

New Rhetoric theory also moved beyond a 'process' approach, to draw attention to an understanding of writing as a process for creating meaning, and reading as a process for constructing meaning - an active series of transactions between writer and reader, in the context of a discourse situation (Haas and Flower, 1988:167). The implications of this are that it complicates the task of the writing instructor in responding to a student text, in that such transactions imply that there is no single correct interpretation or understanding of a text.

Baker (2000:2) explains that the novice writer is subject to a wide range of external forces, from her personal, cultural, and cognitive experience. These include: personal history, home language, cultural and social conventions and all she has read or heard about law. In addition, the environmental context, legal culture and writing conventions, and her role expectations impact on the writer. Drawing on the work of Flower (1987), Baker notes that internal forces equally influence the novice legal writer. These forces may be: the student's existing knowledge and skills, her psychological processes, such as motivation, self-concept and confidence, and her values and goals, both general ethical values and personal standards, and the specific task-related or educational goals.

Bringing all her knowledge and influences together to plan an assignment, the writer then develops a mental representation of what she imagines her written

text should contain. Inevitably, the writer is unable to accurately translate this mental image into a single piece of written text.

A legal reader then interprets this writing. She, too, is influenced by her own past experience and personal history, so that the reader creates her own mental representation of what she believes the text communicates.

Thus, for instructors commenting on student writing, there is a need to develop self-awareness, of the personal influences and the interpretative processes, which affect their own reading. The writing teacher has to attempt to determine what the mental representation of the writer is, and whether she has communicated it in the written piece (Baker, 2000:2-5).

This reader/writer relationship, which underpins written feedback on student texts, is described by Berger as:

> 'the movement of our students and ourselves from meaning to text to reader to writer and back; we should focus as much on planning, monitoring, and revising our own reading and writing as we do on communicating our interpretations of student work' (2000:58).

Berger recommends a 'reflective rhetorical model' of teacher response. The teacher as reader, and then as writer, participates in a reflective conversation with the student as writer, and then student as reader. As 'expert' reader and writer, the teacher should pay attention to the rhetorical context, by clarifying her own vision of the theory that informs her teaching. This will assist in identifying her purpose in reading and commenting.

In addition, by developing a strong focus on the subject - the paper that she is presently reading and responding to, and an appreciation of her role in that task, the teacher develops a sensitivity to her audience. This will enhance her sense of the effect to be achieved by the feedback and it will direct her toward appropriate reflective comments, which prompt students to revise their writing. By constantly monitoring and reflecting on her own reading and writing processes, the writing teacher can revise her understandings and improve her practice (Berger, 2000:72-84; 94).

Enquist (1996:145) in her detailed study of what law students found to be effective comments on their papers, reiterated that when writing feedback responses, writing teachers need to take the advice that they routinely give to students, about being sensitive to audience and purpose.

The setting of goals and defining of priorities for feedback by writing instructors on each assignment, is a recurrent theme in much of the literature. In this way, teachers can avoid responding to too many aspects of each paper. Instructors should identify a manageable number of issues for students to absorb and address in their revisions, as well as indicating a 'hierarchy of concerns,' or a sequence of objectives for the writer (Horvath, 1984:245). Experienced writing teachers recommend: 'deal with the big

picture first'; and: 'go from broad to narrow' (J.K.Lieberman and S.Jacobson in Enquist, 1996:1133).

Empirical research on what students thought to be effective comments, also confirmed the importance of a summarising end comment, which provides an overview of the writer's strengths and weaknesses (Enquist, 1996:156-160).

The number of responses written on any student text should be limited, in order to prevent students becoming demotivated or frustrated, according to most experts (Jamar, 1999:3). Expert writing teachers, surveyed for their practical advice on responding to student writing, are unanimous in agreeing that marginal and interlinear comments are essential, to pinpoint specific instances of paragraph and sentence level errors. However, they caution against excessive 'fragmenting' of the response to the paper ((Enquist, 1999:1130). Le Clerq (1991:8) argues that excessive editing leads to teacher 'burn-out' from overload, and students retreat into simple and safe writing, in the face of an overwhelming number of comments.

Vague or ambiguous comments that fail to specify or explain what the instructor is marking, are unhelpful. Students require text-specific comments, or in-depth explanations, or examples, which suggest a strategy for improving their writing (Enquist, 1996:155; Sommers, 1982:153). However, Larson (1966:154) notes that comments should have 'transfer value' and Jones advocates comments that will 'serve the writer for the long term' (as cited in Enquist, 1999:1147).

Student writers should be encouraged to develop their own 'self-editing' skills, thus not every minute error should be marked or corrected (Horvath, 1984:247; Williams, 1981:156). One innovative approach suggested, is to require students to complete a self-evaluation guide after submitting assignments, to enable them to learn how to identify their own strengths and weaknesses. This document can then be compared to the writing instructor's comments, at a subsequent writing conference (Shaw, 1999:7-8).

Writing conferences, as a follow-up strategy to written responses, should be an integral part of the feedback process. Conferences are interactive, they allow for further explanations, and they facilitate an expanded dialogue between teacher and student. Further, the written comments should not be seen as 'disembodied remarks', but they should relate back to classroom discussions, notes and textbooks, reinforcing the messages that the student receives from the teacher (Sommers, 1982:155).

Finally, most academics draw attention to the importance of the tone of written responses to student writing. The affective aspect of feedback, which motivates writers to revise, demands that an instructor respond to the written text sensitively, without:

> 'posing veiled attacks on the student, her opinions and interests, her worth as a writer' (Horvath, 1984:247).

Lindemann (1982:221) also observes that, although the only appropriate purpose for comments on papers is to offer feedback and guide learning, some comments appear to have been written for other reasons, when they include 'snide remarks' or 'damn the writer with faint praise'.

Enquist's expert teachers' survey (1999:1148-1150) indicates that intemperate, brusque, sarcastic, angry, or overly negative comments must be avoided. Making assumptions about the student's effort is also regarded as an unfruitful approach, which engenders defensiveness, and offends writers. A balance of positive responses, praising the student by positively reinforcing what she has done well, and constructive criticism, is crucial.

In Enquist's student survey (1996:169-174), students reacted positively to comments in which the tone of teachers' responses was professional, empathetic, friendly, encouraging and thoughtful. The need to remember that comments should be dialogic (Rideout and Ramsfield, 1994:74), and reflect that teachers are a resource, and as such, they should share information generously, was a central thought that should influence all commenting (Cohen, et al. 1999:2).

These then represent some of the more significant theoretical insights that emerge in the literature on feedback. In Chapter 4, the work of the student tutors at UND will be reviewed and evaluated against this framework.

2.3 Teaching Models designed to accommodate the theoretical perspectives on teaching legal writing:

Rombauer's survey (1973) of persons listed in the American *Directory of Law School Teachers*, as teachers of 'Legal Research and Writing' courses describes the teaching/staffing models selected by law schools in 1969/70:

- sixteen schools used student instructors in combination with staff members and sometimes with attorneys too;
- three schools used attorneys exclusively;
- twelve schools used short-term instructors (recent graduates hired for one or two years as 'instructors', 'fellows' or 'associates'); and
- the remaining thirty-two law schools used faculty members who were either law lecturers or library staff.

Twelve years later, Boyer (1985:26) described the three models that had been adopted for teaching legal writing:

1. The Faculty model: full-time staff members may teach the course as a full subject in the first year curriculum, or as an adjunct to another substantive law course taught in first year;

2. The Associate Model: recent law graduates (graduate assistants) are hired as legal writing instructors;

3.   Student Teaching Assistant Model: student tutors are paid a moderate
     amount or receive course credits for assisting with legal writing teaching.

The reasons for the various models having developed in the United States
around this time, according to Gale (1980:318), relate to three problematic
aspects of teaching writing in law schools: (a) staffing of such courses; (b)
work, time and credit; (c) structure and contents.

With regard to staffing, Gale reported the 'weight of faculty disapproval' and
'institutionalised contempt' as the greatest deterrent to designing effective
writing courses. New or non-permanent staff were being appointed to teach
legal writing, thus guaranteeing a high staff turn-over and discounting the
value of experience or continuity, which are highly valued in other substantive
law courses. (1980:318-320).

As recently as 1995, Levine refers to teachers of legal research and writing as
'second-class members of the law school academy'. However, Levine reports
that a 'revolutionary change' occurred in the status of legal writing teachers in
the United States, during the nineteen-sixties and the seventies. Increased
attention was focussed on legal research and writing, according it legitimacy
as a specialist interest, and a process of 'self-professionalisation' of writing
teachers took place. As a result, many legal writing specialists have achieved
recognition of their expertise and have secured promotion to full
professorship, together with an enhanced sense of status (1995:531).

The most recent survey of legal writing (Durako, 2000:95) confirms that legal
writing teachers are still paid low salaries, for a 'staggering workload', while
being relegated to 'second or even third class status'. More legal writing
courses are taught by professional legal writing teachers now, and many
writing programmes are overseen by a tenured Director of Legal Writing. Of
185 schools surveyed by Levine and Stanchi (2001:553) in 1999/2000, 66%
of them use full-time legal writing instructors.

Considering work, time and credit, Levine (1995: 544) maintains that there is
an inadequate recognition of the 'different pedagogy' of legal writing, which
manifests itself in an unusually heavy workload, including a heavy
administrative burden, and the time spent hiring, training and supervising legal
writing instructors. Frequently referred to as the 'orphan of the curriculum'
because of its inferior status and poor credit point allocation, legal writing has
to be regarded as an integrated part of a law school curriculum before it can
be taught and treated seriously (Kalven, 1948:109).

Regarding the structure and contents of writing courses, traditional teaching
methods, such as lectures and large group instruction, are not particularly
appropriate for teaching skills and analysis. Assignments should be:

    'designed to direct the student's research, reflection, and writing along
    legal channels deep enough to yield insight into the genuine complexity
    of the legal writer's task, broad enough to demonstrate its importance,

and distinct enough to teach the necessary discipline of focus, control, and definition' (Gale, 1980:324).

In addition, students must receive detailed, individual responses, articulated by a trained instructor, and preferably followed up by an individual conference. Such structural features impose particularly rigid and costly constraints on the design of a writing course.

2.3.1 The use of Student Tutors to assist with Teaching Legal Writing:

In a paper entitled: 'Law Student Teachers: An Untapped Resource', written in 1979, Trakman (1979:341-7) reported that their use was limited in scope to mainly 'practice-oriented' courses, such as legal writing and research courses, and clinical law. Tutors could be a valuable resource to combat the alienation and learning difficulties encountered by first year law students, while at the same time enhancing their own legal skills, confidence and future employment prospects.

Two subsequent surveys on the use of teaching assistants in the US, (Feinman, 1991:269; Cheslik, 1994:394) suggest a vastly increased use of peer teaching in law schools in the ensuing period. It seems likely that this is attributable to the paradigm shift in teaching theory, from the traditional 'product-centred' approach in first year legal writing courses, toward a 'process' approach, which of necessity is more labour intensive.

Feinman emphasised the cognitive as well as the affective benefits of using senior law students who were close in experience to first years, to provide individualised teaching assistance and emotional support. He also recognised the inherent difficulties that such teaching assistants experience, in having limited expertise in the substantive material. Having to cope with group dynamics, and complicated interpersonal relationships with junior students, also posed problems.

However, provided careful selection procedures were followed, and adequate training and preparation was provided in both these areas, Feinman concluded that the benefits to students, teaching assistants, faculty members and the law school as a whole were hugely rewarding (1991:270-2; 275; 277).

Cheslik (1994:394-8)) focussed specifically on the use of student teaching assistants in legal research and writing courses. Based upon responses from 64 law schools in the US in 1992/1993, she categorised the possible roles of teaching assistants as being either: (a) classroom teachers, (b) graders or evaluators (assessing or merely giving feedback), (c) mentors or mediators.

Most law schools required their tutors to provide written feedback on student assignments (60 schools), but only 37 schools structured their courses so that tutors were responsible for the final critique on assignments, prior to these being marked by a staff member (Cheslik, 1994:397-9).

The majority of law schools using tutors had intensive selection procedures in place, as well as training and supervision mechanisms. Weekly training was required at 69% of the schools; 60% provided no more than 5 hours of training throughout the semester; while 28% of the schools surveyed indicated that they provided more than 30 hours of training for their tutors in a twelve week semester. For most tutors (80%), at least a one hour meeting between tutor and supervisor was scheduled each week. Tutors were supplied with a written manual relating to the course at 69% of the schools. (Cheslik, 1994:403-9).

The conclusions in Cheslik's study are overwhelmingly positive, although she cautions that the advantages of using teaching assistants, whether to students, tutors or academic staff, are not empirically verifiable. They are merely perceived from observation, or experience by the respondents of the survey. Tutors are a cost-efficient, reliable means of helping to improve first year students' skills, and reflect a commitment by law schools to address the personal and learning needs of students. Staff benefit from the close contact and direct feedback, through the tutors, from students, as well as being relieved of some of their burden of marking and commenting on first year written work (Cheslik, 1994:412).

Advantages to the tutors themselves were perceived as improved legal skills, the satisfaction obtained from forming close friendships with other tutors and junior students, as well as enjoying close personal contact with a staff member (Cheslik, 1994:411).

In Durako's recent study (2000:111) of 117 US law schools, 67 use student tutors in some capacity; at 2 schools, tutors are used exclusively to teach writing; at 7 schools, they are used for half of the teaching; 58 schools use tutors for less than 50% of the teaching; and 43 schools do not use tutors at all. On average, tutors receive fourteen hours of training, and spend about six hours per week on their duties.

2.3.2 Two Detailed Models of Student Tutor Programmes:

At UND Law School, through discussions, readings and workshops from visiting legal writing experts between 1996 and 1998, we were exposed to two models of courses, where senior students were trained to assist with teaching writing. These courses provided the impetus for designing a course that would meet our need for additional instructors, to assist with teaching writing to first year students.

2.3.2.1. Northeastern University Law School: Advanced Legal Practice for Teaching Assistants, Boston, Massachusetts, USA:

The teaching assistant file, provided to second year teaching assistants (tutors) in the Advanced Legal Practice course at Northeastern University Law School, comprises an extremely detailed collection of materials. These range from theoretical information on the goals, philosophy and structure of the first

year Legal Practice course, to theoretical perspectives on establishing good student-tutor relationships. Three main areas are covered:

(a)   substantive law issues (course knowledge);

(b)   student issues, such as group dynamics, problem students, building relationships of mutual respect and trust, counselling resources; and

(c)   teaching /feedback methodologies.

The emphasis on sensitivity to diversity amongst students, and facilitating a positive learning environment is a strong one.   The tone of the tutor communications is extremely personal. A head tutor system, in which a third year student, who had been a tutor in the previous year, is appointed to act as a mentor to the tutors, is in operation. Tutors are encouraged to partner with another tutor, in a 'buddy system', for purposes of critique and support. Collaborative learning is also recommended for students, in the form of peer reviews of first drafts of writing, and some pair work at tutorial classes.

Once selected, tutors attend a series of advance training sessions, prior to meeting their students.   Preparatory reading is required and training on writing/feedback priorities is intensive as the weighting toward legal writing in the first year course is apparent. Tutors are supplied with the first year course materials to read in advance, and a few sessions are spent discussing practical suggestions on giving effective feedback.   Thereafter, a weekly preparation meeting is scheduled for tutors, based upon a set of formal meeting agendas, which carefully mirror the weekly activities of the first year class.

A central factor in developing tutors' self-confidence in regard to course content and teaching is the meticulous approach to providing sample answers and marking guides for every student assignment.   However, the explicit nature of the information provided does indicate the high level of commitment that is expected.   A serious and uncompromising adherence to educational theory and practices clearly forms the basis of the course design.

(Selected samples from the materials are included in Appendix 2A)

2.3.2.2 Georgetown University Law Centre: Law Fellows Seminar: Washington, DC, USA

Georgetown University uses 'law fellows', who are upper level students, to teach their first year Legal Writing and Research course. Forty law fellows are selected from 120 applicants, to teach small groups of first year students. Their curriculum follows the structure of the first year research and writing course. The tutors' role is to act as teacher and advisor, encouraging and assisting new students to adapt to law school. The law fellows teach a weekly workshop, and they in turn attend a two hour preparation meeting with the course professor each week.

This course differs from the Northeastern course quite significantly, in that law fellows have to submit certain written assignments, carry out library research, and participate in several in-class writing assignments themselves, in preparation for marking student assignments. Fewer samples and no specific marking guidelines are provided for assignments, but weekly lesson plans are suggested as a basis for the tutorial 'workshops'. Several basic textbooks and a pack of course materials are provided, but these offer less detailed guides for the tutors. In respect of advance tutor training, the Georgetown model is for the tutors to attend an intensive week's training prior to the start of the semester. The law fellows are prepared for the various student assignments during this training week, as well as during their weekly meetings.

The early training focuses on pedagogical issues from various readings. Articles on: guidelines and strategies for effective commenting; holding writing conferences; time management; teaching writing process but responding to written products; critical reading strategies; and using effective teaching techniques that accommodate different learning styles, are some of the topics discussed.

The professor's lesson plan for the weekly large class is provided, and tutors use this as the basis for their own teaching. A weekly agenda is set, with each session ending with 'final thoughts' on the previous week's class, to encourage tutor feedback and reflection.

A strong emphasis is placed on the interrelation between previous tutors and the current group, who can share and benefit from the experience of the previous tutors.

(Selected samples from the materials are included in Appendix 2B)

2.4 Teaching Legal Skills at Natal University, Durban:

In 1999, a tutor-training course, modelled very closely on the Northeastern University tutor-training course, was introduced amidst some scepticism from UND staff members. The course requirements were that sixteen selected fourth (final) year law students were to attend a one and a half day training workshop prior to the start of the semester, attend a weekly double-period preparation class, and teach a weekly tutorial group throughout the year. The course would be accorded the credit points equivalent to any other elective course.

Tutors would be assessed in four areas, which were based on the four course outcomes.

(1)   Their teaching would be assessed on a combination of journal entries relating to lesson planning and reflections on teaching, and their student evaluations;

(2)   their ability to provide effective feedback on student writing would be assessed from samples of their written feedback on student work, in their portfolios;

(3)   the quality of their observations relating to group dynamics and multiculturalism, recorded in a reflective journal, would allow this aspect to be assessed;

(4)   their class participation in role-plays, and their contribution to discussions, would be assessed by the course supervisors jointly.

One of the aims of introducing reflection as an explicit criterion in their assessment, was based on the assumption that reflection enhances teaching practice and generates thoughtful responses to writing. According to legal writing experts:

> 'Reflective behaviour is used here in the sense of monitoring current meaning and adjusting goals, ideas, plans or strategies when it appears the reader or writer was mistaken; it is the ability to think about a process in process' (Berger, 2000:60).

2.4.1 Tutor Training on Feedback:

At the preparatory workshop, tutors participated in a biographical exercise and in some diversity training, learnt group facilitation skills and were informed about the structure and goals of the first year law course. In addition their attention was focussed on a core, instructive reading by Baker (2000): 'Diagnosing legal writing problems: Theoretical and practical perspectives for giving feedback.' The article explains the goals of giving written feedback and exposes the contradictions that emerge in the feedback relationship.

In responding to student writing, Baker advocates that an instructor responds as a 'surrogate intended reader', that is, the instructor should place herself in the position of whatever audience the writing is directed toward: whether it be an attorney, a client, or an advocate. Priorities in commenting are set according to what is most important for the particular writer, at the point when the writing was done, according to the assignment criteria. But, this must be balanced against the need to avoid overburdening the writer with too many comments. A balance should also be sought, between positive and negative comments. Praise for specific aspects that were well written should be mixed with constructive criticism of weaknesses in the paper. Suggestions or guidance on how to improve the writing, without being too directive, must be offered.

During their training, tutors were alerted to the fact that not all writing problems are cognitive: they may relate to 'invisible' behavioural problems, such as a student not reading the assignment instructions carefully, failing to plan the assignment in advance, or leaving the task until the night before the paper is due. In addition, students' emotional problems, such as a lack of motivation, a sense of alienation, or depression may affect the quality of their writing.

Practical suggestions for giving feedback were included in the tutors' theoretical preparation. These suggestions focussed on setting a hierarchy of areas to address in feedback, so as to avoid merely editing, which emphasises issues of relatively minor significance.

In his article, Baker (2000:7) advocates a hierarchy of concerns for the writing instructor. Firstly, the writer's ideas (or content), which relate to understanding the assignment instructions and the relevant law, should be considered. Following on that, tutors should comment on form, such as the large-scale organisation of the writing, e.g., the overall planning and structure. Thereafter, the small-scale organisation, such as the arrangement of each sub-aspect of law and facts should be reviewed. Finally, feedback on writing issues such as paragraphs, sentence structure and word choice are pertinent. The use of responsive questions, instead of directive comments to suggest improvements, was recommended.

Some short commenting exercises, reviewing student samples from previous years, were undertaken with the tutor group, in an effort to practise this newly learned skill. Tutors were expected to begin commenting on students' tutorial work from the first week, and to keep samples, for inclusion in their assessment portfolios. These examples would be reviewed and commented on by the course supervisors after the first five weeks of the semester. This basic framework of reference was established to enable the tutors to begin commenting on students' written work.

Overview:

In reviewing the literature, it is clear that the 'current-traditional' paradigm has been replaced by the 'process' approach to teaching writing. The 'social' perspective on legal writing is also a valuable theoretical frame for understanding how novices, that is, first year law students, can be taught how to write in accordance with the accepted conventions of the legal discourse community.

The pedagogical implications of these approaches are that intensive writing instruction, with detailed feedback to students, on multiple drafts of assignments is required. This has necessitated additional teaching resources for writing instruction. In the United States, various models of staffing, including the use of senior students as writing tutors, have been adapted to meet these requirements. Since 1999 at UND, this strategy has been adapted and implemented, to provide additional teaching resources to assist in the intensive teaching of legal writing skills to first year students.

Chapter 3

Research Methodology and Approach:

3 Introduction:

The overall objective of the research in this study is to develop an accurate sense of student tutors' shared capacities to respond to student writing. The conclusions which emerge can be formulated into guidelines for more effectively educating, training and supervising student tutors. Improvement in these areas should enhance the tutors' skills and equip them to make a meaningful contribution to the teaching of legal writing to first year law students, in a South African context.

In this chapter, the research paradigm within which the research was conducted, the approach adopted in the study, and the methods to be used are set out. Other studies that have been conducted in this field will then be reviewed. Following that, I shall explain the sampling techniques, data collection methods and methods of analysis used in the study. Thereafter, possible sources of error are reviewed and the concerns raised thereby are addressed.

3.1 Research Paradigm and Methodology

The paradigm into which this research fits is the interpretive paradigm. Within this paradigm, the associated dimensions of enquiry are defined in terms of ontology (the nature of the reality to be studied) as: a study of the internal reality of subjective experience; in terms of epistemology (the nature of the relationship between the researcher and what can be known) as: empathetic, with the risk of observer intersubjectivity; and the methodology (how the researcher goes about studying whatever she believes can be known) is typically interpretive, qualitative or interactional (Terre Blanche and Durrheim, 1999:5-6). These dimensions of the paradigm are appropriate to the nature of this study.

Miller and Crabtree (1992) suggest that:

> 'interpretive analytic styles vary along a continuum from quasi-statistical styles to immersion/crystallisation styles. Quasi-statistical styles involve using predetermined categories and codes that are applied to the data in a mechanistic way, to yield quantifiable indices. Immersion/ crystallisation styles involve becoming thoroughly familiar with a phenomenon, carefully reflecting on it and then writing an interpretation' (as cited in Terre Blanche and Durrheim, 1999:140).

This description characterises the blend of interpretive analytic styles to be used in the research. Classification categories, determined in advance, will be applied to analyse parts of the data, while immersion and reflection on the data will be relevant in interpreting the material.

The research methodology selected is a qualitative investigation, based on multiple-case studies. In this empirical study, the approach to samples of student tutors' feedback comments on first year student texts, will predominantly be an exploratory and inductive textual analysis, because the area of study is relatively uncharted. Inductive research is characterised by an immersion in the details and specifics of the data, to discover important categories and interrelationships, and it usually begins by exploring genuinely open questions. Modification and development of categories, as themes, dimensions and interrelationships emerge from the data, are typical of the inductive approach of a qualitative inquiry (Terre Blanche and Durrheim, 1999:43).

But, elements of the approach will also be descriptive, as the study aims to provide an in-depth description of the phenomenon studied, through the means of interpretation, classification and categorisation. In respect of identifying the quantity and nature of the feedback comments, it was also necessary to adopt a limited content analysis approach.

The basic strategy adopted for analysing the samples, is that of the case study, which Lindegger defines as:

> 'an intensive investigation of particular individuals...(Case studies) are usually descriptive in nature and provide rich longitudinal information about individuals or particular situations. Case studies have the advantage of allowing new ideas and hypotheses to emerge from the careful and detailed observation' (as cited in Terre Blanche and Durrheim, 1999:255).

An important factor in the selection of the case study approach is that it is a strategy, a choice of object to be studied, rather than a methodological choice, which allows for the precise investigation of a phenomenon in its real context (Stake, 1978:5-6). Because the selection criteria for cases is their 'particular typology' or membership of a class of problems that are of interest, the samples may not be representative, and therefore the results may not be generalisable.

Small numbers of individual cases may be included in this approach, which are then known as multiple-case studies, where the aim is not to achieve representativity of results by an increase in numbers, but to produce theoretical, rather than statistical generalisations, and each case is in itself a complete study. This strategy constitutes an alternative to strictly sampling-oriented methods of data selection (Titscher, et al. 2000:43). This 'collective case approach' analyses cases in terms of their specific and generic properties and was therefore selected for its particular applicability to the available data and research goals (Stake, 1978:7).

It is typical of this approach that researchers are rarely satisfied with a single method of data collection. Triangulation in the case study approach is regarded as an alternative to validation, to achieve an in-depth understanding of the phenomenon in question. It involves studying things in their naturalistic

settings, attempting to make sense of, or interpret phenomena, using a variety of empirical methods. This strategy adds rigour, breadth and depth to any investigation, and thus is entirely apposite for the purposes of this study (Denzin and Lincoln, 1994:2-3).

However, the metaphor of 'bricolage', carried out by a 'bricoleur' or a 'Jack of all trades', a 'professional do-it-yourself person', best describes the way in which research practices, techniques or tools are pieced together, invented or adapted from available methodological resources to fit the research questions in a given context, in qualitative research (Levi-Strauss, 1966:17). This description seems to include more variation than triangulation suggests, and it accurately reflects the combination of analytical techniques and data that I have used, to suit the particular demands of the study: qualitative (thematic, descriptive) and quantitative (descriptive content counts), to achieve a multivariate perspective (Mouton, 2000:166).

Samples of tutors' feedback comments and other documents, which have been generated from different perspectives, such as student evaluations of the tutors, a tutors' self-assessment form, and a questionnaire, completed by the tutors themselves will comprise the primary data for the study. In addition, some comparative data was introduced. This material is in the form of the tutors' test grading scores, and their personal academic records, in an attempt to 'cross reference' their commenting capabilities against other possible relevant indicators.

Such 'slices of data', from different sources, are recommended by 'grounded' theorists, such as Glaser (as cited in Denzin and Lincoln, 1994:438), for verification, or to confirm issues of analysis. This combined method choice is common in qualitative research, where the overall nature of the research methodology shapes how each method is used (Silverman, 1993:9).

Diverse evaluation approaches are recommended, as is contextual sensitivity, in a document developed by the American Joint Committee on Standards for Educational Evaluation, in 1981 (as cited in Denzin and Lincoln, 1994:535). The committee suggested that the four critical attributes of programme evaluation should be: utility, feasibility, propriety and accuracy. Multiple methods, qualitative and quantitative, were recommended as desirable in evaluating educational programmes. This type of evaluative approach fits the goals of the present study, as it should produce a carefully nuanced evaluation, rather than an impersonal assessment against rigid criteria. It has the capacity to factor in the unique context, and subjective elements, which determine the shape and structure of the programme under review.

Eisner (1985:91-117), reacting to the scientific assumptions that have underpinned the methodology of most educational evaluation, proposed the use of an educational connoisseurship and criticism model. In evaluating educational programmes, he recommended the use of concepts that are embedded in the artistic tradition. Educational connoisseurship, is an appreciation, in the sense of an awareness and understanding, of what one experiences. Combining this with educational criticism, by which he means:

description, interpretation and evaluation, Eisner suggests that the base of educational evaluation could be widened, to reflect and make visible the real qualities that emerge in a teaching situation (1985:101). These insights are particularly appropriate, and endorse the nature of the evaluation process adopted in this study. In order to be of value, it is essential that the study reflect the real and unique qualities that exist in the context of teaching writing at tertiary level, in the multi-cultural classrooms of South Africa.

Greene (1994:537) highlights the critical dimensions of qualitative evaluation practice as: (i) use of case studies to frame the work and emphasise context, as an essential element of meaning (but not generalisability); (ii) heavy reliance on qualitative methods for meaning construction; (iii) acknowledgement of the influential presence of the researcher's 'own self' in the inquiry process; (iv) seeking in the researcher's own work to augment practical programme understanding. Each of these dimensions is adequately met in the present evaluation.

However, House (as cited in Denzin and Lincoln, 1994:540) describes a key aspect of the modern evaluation approach as the recognition of political values and the shift toward an emancipatory vision for applied social inquiry, in an endeavour to secure social justice. Greene (1994:538-541) notes that qualitative approaches are compatible with openly ideological approaches, but will not be enough if the evaluator is seeking a more proactive role in the social policy sphere. Greene elaborates that:

> 'interpretivism justifies values in inquiry, but does not justify any particular ones (1994:541).

The social justice or ethical values underpinning this study are evident in the desire to enhance the pedagogy of legal writing, so as to acculturate novices into the legal discourse community. In the South African context, the particularly pressing need of students for whom English is a second or third language, to be explicitly introduced to legal discourse conventions, can be realised by means such as enhanced and extended teaching resources. The applied research conducted in this study, is aimed at practical improvements in the design and implementation of a tutor-training course that can contribute toward achieving those aims (Terre Blanche and Durrheim, 1999:37-39).

3.2 Comparable Studies conducted in this field:

The following few examples of studies undertaken on teachers' feedback on student writing were examined for possible relevance to this study:

Sommers (1982) conducted a fairly loosely-constructed study of the feedback comments, intended to motivate revisions, of thirty five composition teachers, over three years, at New York University and the University of Oklahoma, in the United States. The survey is entirely interpretive and does not use any quantitative methods. The conclusions are personally observed, general findings, supported by selected examples in an academic journal article.

A study to determine what kind of training would be useful to new writing instructors was undertaken by Siegel (1982:302). She compared the feedback comments made by eight experienced English teachers, to those made by seven inexperienced teachers, from departments other than English. The same set of papers was copied, and each was marked by one new teacher, as well as by two different, experienced teachers. The number, patterns and types of errors marked were classified in categories and analysed. No controls were attempted. From the analysis and discussion, Siegel identified useful features to include in training new writing teachers.

Zamel (1986) reviewed earlier research, and, based on her conclusion that little had been studied about teachers' feedback comments on writing by students with English as a second language, examined the comments of fifteen (ESL) university-level teachers. One hundred and five texts were studied and analysed, to produce findings that were consistent with those of Sommers (1982), in regard to first language teachers of English. The method adopted in the study is interpretive and inductive, using extracts to support the conclusions.

A quantitative approach was used by Robb, Ross and Shortreed (1986) in an empirical study to determine the salience of feedback on error and its effect on second language writers. Their study investigated the relative merits of indirect and direct feedback by comparing four types of error treatment in ESL writing. The conclusions reached were that less time-consuming methods of directing student attention to surface errors, than teachers' practice of direct corrections on the papers, could be used.

An analysis of patterns of error in three thousand students' composition papers in 1988, by Connors and Lunsford, provided the data base for a later study by the same researchers in 1993, in which they analysed teachers' 'global' comments on student writing. This was the first large-scale examination of the comments that teachers make on college student papers, but no similar studies have been undertaken on law students' writing (Enquist, 1996:148,n8).

No study could be found that dealt directly with tutor feedback on texts, and a review of legal writing literature produced only one study relating to critiques of legal writing, which was Enquist's empirical study of the responses of law students to instructors' comments on their writing (1996). The approach adopted is an exploratory, interpretive study using four selected students who represent familiar student 'profiles' in an actual writing class. The students evaluated the comments of five different writing instructors on one of their papers, submitted in their legal writing course.

Some aspects of the study were analysed by means of content analysis methods, e.g., in rating the usefulness of aspects of the instructors' critiques on a rating scale; counting the number of 'question' comments, marginal and interlinear comments. Descriptive adjectives were selected from a questionnaire, to characterise the tone of comments, and open-ended questions asked for responses to instructor comments. Charts showing the

numerical rating of comments, together with the students' remarks about the same comments, were used to indicate a breakdown in rapport between student and instructor, as the critique progressed.

The qualitative approach in this study, using some quantitative methods, combined with a questionnaire, involving a small sample, produced rich, detailed interpretations, and insightful conclusions. The nature of the enquiry and the methodology has resonance with the research undertaken .in this study.

3.3 Sampling, Data Collection and Data Analysis:

a: Feedback Samples:
A detailed analysis and interpretation of feedback comments on a small number of samples had to be made with the purpose of establishing the accuracy, tone, effectiveness and general character of tutor responses to first year students' legal writing assignments. In order to draw generalisable conclusions comparisons and correlations across some of the categories could then be made. The significant units of analysis would be tutors' responses to student writing, evident in the text samples.

Considering the need to provide a 'thick description' (Geertz, as cited in Terre Blanche and Durrheim, 1999:139), I decided that eighteen samples: six samples of each of three different pieces of first year student work, on which six tutors had written feedback comments, would be analysed. This was considered to be an adequate number for developing some general theoretical observations that would inform the conclusions of the research and would permit a rich and detailed exploration of a small amount of material, produced in a specific context, to ensure focussed and pragmatic conclusions.

Three genres of student texts, upon which tutors have written feedback comments, were selected for detailed analysis. This selection was based on several considerations:

(a)   a variety of text genres should be selected to determine whether tutors' responses across genres displayed consistency or differences;

(b)   a sequential selection of texts, allowing for reflection on the tutors' developing techniques in responding to writing, as well as possible progress in the students' writing skills, should be incorporated;

(c)   the texts should be examples of assignments for which the tutors assumed complete responsibility for commenting.

The three assignments selected were: (a) a case summary; (b) a short legal opinion; (c) a report on a court visit, focussed on the theme of 'access to justice'. These were the three assignments for which the tutors assumed complete responsibility for providing feedback to the students. The assignments reflect the sequential engagement of the tutors with first year student writing, over three different text genres.

The collection of the samples was partly opportunistic, in that each of the six tutors had submitted the three selected pieces of work for inclusion in her assessment portfolio. The tutors selected assignments on which they considered they had written helpful feedback, to be used to assess their development in this aspect of the course. The samples were produced in context: the tutors commented on these first drafts, which were then returned to the student writers for revision, before submitting them as final drafts for assessment. Thus, although the six tutors did not comment on the same pieces of work in this study, their responses are authentic, and were not influenced by artificial conditions that might prevail had the context been created by the researcher in an experimental situation. The supervisors' assessment of these samples contributed 35% of each tutor's final mark for the course. My research concern was that the samples reflect an adequate, representative 'cross-section' of the commenting work of the tutor group.

Although the original design had been to match three mother tongue English speakers with three second language tutors, in collating the samples, only two of the six tutors with the required samples were second language English speakers, their mother tongues being Zulu and Tsonga respectively. This variable will not be considered, as it is beyond the scope of the present study.

All six tutors in the study were females, as the selected samples had not been included in the assessment portfolios by the relatively small number of male tutors (four out of sixteen tutors) who participated in the Teaching Legal Skills course in 2000. In one of the few comparable studies on instructor feedback, Enquist concludes:

> 'the information obtained from this study does not suggest any basis for drawing conclusions about the significance or insignificance of gender in critiquing' (1996:187).

Data Analysis:
Initially, I had decided in advance on certain categories to be used for classifying the feedback comments on all three assignments, e.g., number of comments; number of questions; aspects of the assignment to which the comments relate. But, after immersing myself in reading and re-reading the comments, and then reflecting on the data for some time, certain features of the specific assignments suggested that different classifications of tutor feedback would be appropriate for each assignment. As an example, the case summaries elicited fewer feedback comments, because the exercise is a formulaic application of suggested headings, and the tutors' responses were accordingly less detailed. Therefore, although several general classifications, such as 'number of comments per page', 'tone of feedback', and 'balance of positive and negative comments', apply to all three assignment samples, I subsequently adapted the classifications to suit each assignment.

This bears some similarity to the approach adopted in Grounded Theory research methodology, in which categories are developed and modified to produce a well-constructed theory, but the applied nature of this study does

not conform to the major premise of Grounded Theory, which is the generation of hypotheses (Strauss and Corbin, 1990:23).

For the purposes of interpreting the feedback comments in context, an attempt was made to identify tone and themes, and then to code the comments according to the emerging themes. After reflection, an overall interpretive analysis was finally recorded to make sense of the pieces of information identified by the various methods and techniques.

b. Student Evaluations:
Completed student evaluation forms of the six tutors were included in the data. All evaluation forms that were completed for each tutor in the study have been included. Thus the sample collection was opportunistic, but authentic, as the forms were generated in context and were included in the tutors' portfolios, to be incorporated into their final assessment. The number of evaluation forms collected per tutor was: 5; 8; 9 (3 tutors); 10.

Data Analysis:
The scores on the individual evaluation forms were counted, tabulated and categorised, for each tutor. Comments were transcribed and collated, before they could be studied and compared for themes. After some deliberation, repetitive observations emerged, and following upon reflection on these, I analysed and interpreted the overall impression that emerged from the evaluations, for each tutor.

(Sample form attached as Appendix 3)

c. Self-Assessment forms:
Each tutor was required to complete this form (attached as Appendix 4), drafted by the course supervisors, and include it in her assessment portfolio. It was set as an exercise in developing both their reflective and their assessment skills. The tutors' final mark, determined by their supervisor, would take this self-assessed mark into account.

Data Analysis:
The tutors' scores of their own ability were contrasted with the final marks, which had been awarded by their personal supervisors. Discrepancies were noted and the tutors' justifications of their marks were carefully considered. Some conclusions and reflections about these discrepancies were recorded.

d. Tutor Questionnaire:
This form (attached as Appendix 5) was completed at the end of the Teaching Legal Skills course by each tutor. The questionnaires were completed at home, and returned personally. Tutors were informed that it was for the purposes of this research study.

Data Analysis:
Comparisons across the individual tutor's responses that related particularly to feedback comments were made, noting any similarities and differences. These observations were compared to the overall impressions of each tutor's

practice, as evidenced in the samples of feedback studied. I was aware that the descriptions in this questionnaire may be influenced by evaluator apprehension, and might reflect the theoretical views about giving feedback, which the tutors thought that I, as their teacher, would want to hear from them. However, the fact that the questionnaire was completed after the course had concluded, and their responses would have no bearing on their course results, should have neutralised that effect to some extent. The purpose of the form was to elicit the tutors' authentic, personal perspectives, on their ability to provide helpful feedback to students, without any considerations of assessment.

3.4 Other comparative data:

a. Legal History test marking:

Although marking or grading of student papers did not form any part of this study, I anticipated that there might be a possible link between giving effective feedback, and accurately assessing a students' work. This occurred to me particularly when some tutors expressed the view, in the tutor questionnaire (Appendix 5), that they saw the task of providing feedback comments as part of justifying the mark awarded for a piece of work. Thus, a record of the marks awarded by tutors, for a Legal History test, completed in August, 2000, was compared to my moderated results for each set of tutors' scripts.

b. Tutors' Academic Records:

In an endeavour to explore some expected correlation between tutors' academic success and their ability to give feedback, I recorded their academic scores from the Matriculation examination, and from their final year of study in the LLB degree. It was anticipated that these might be useful indicators or predictors of ability in regard to responding to writing.

3.5 Possible errors:

I am mindful of the fact that as one of the two supervisors responsible for the introduction and design of the Teaching Legal Skills course, and as one of three teaching supervisors on the course, I have a vested interest in the outcome of the study. My approach to the research is dictated by my understanding of the term 'legal writing' and how I believe it should be taught. My predisposition toward the use of student tutors, and my belief in their capacity to be successfully trained and utilised in writing pedagogy, is also apparent.

The value of expanding teaching resources in creative ways, in a South African context, is a significant factor influencing my interest in the research topic. Underlying this view is my conviction that teaching legal writing effectively requires significant teaching resources, which are not available, unless we develop a carefully structured programme to educate student instructors, who will assist in teaching writing.

Therefore there is a possibility of an interpretive bias on my part. My bias may be reflected to some degree, in my interpretation of the data, but by

introducing an element of content analysis to both the writing sample analysis and the student evaluation analysis, I have attempted to achieve a balance between an entirely subjective interpretation and a quantifiable analysis. I have also tried to respond very closely to the texts, and to maintain an openness to whatever emerged from the data, in my interpretation.

I acknowledge a possible experimenter or researcher expectancy effect, particularly with regard to the questionnaire administered to the tutors at the end of their course, specifically for the purposes of the research study (Mouton, 2000:106). I would exclude the possibility of demand characteristics affecting other aspects of the study, as these were generated in the context of assessments for the Teaching Legal Skills course. In this category are the student evaluations, the selection of the tutors' samples for inclusion in their assessment portfolios, and the self-assessment forms. Mouton, however, includes this 'evaluation apprehension' as a possible source of error in data collection (2000:107).

Siverstein cites the risk inherent in the choice of the multiple case study strategy, as that of analysing at high levels of inference. Therefore, there must be a serious attempt to:

> '(reconcile) an individual case's uniqueness with the need to understand generic processes at work across cases' (as cited in Denzin and Lincoln, 1994:435).

By developing an overview, which takes into account an appreciation of the personal idiosyncrasies of individual tutors in the study, I have attempted to address it with caution.

As mentioned above, the conclusions in a case study also bear the inherent risk of being limited in applicability to wider contexts, as the results may not be generalisable. However, the study is designedly context-specific, and the focus and purpose of the research is aimed at tutors who are teaching legal writing in South Africa, so this is not a detracting feature in my opinion. The more general conclusions could, in addition, be extrapolated and applied to student tutors who are involved in teaching writing in other discourse communities.

Chapter 4

Analysis of Data on Feedback by Tutors:

4 Design of the Study:

One of the main purposes of the study was to ascertain the quality, accuracy and types of feedback comments made in response to student writing, by tutors participating in the Teaching Legal Skills course in 2000. This knowledge would be one of the factors in evaluating the worth of such a programme. It would also provide empirical information about the effectiveness and pervasiveness of the tutor training, regarding pedagogical priorities. It is anticipated that the findings and conclusions which emerge will identify the shared capacities of student tutors, and highlight any general patterns in their commenting. The analysis should reveal the aspects of teaching legal writing at which tutors are adept, as well revealing the tutors' personal idiosyncrasies, which undermine the goals of the course. This information will contribute toward developing guidelines for improving tutor education and commenting practice.

Three student assignments were identified as appropriate texts to analyse. Six tutor samples of each of these three pieces of writing, providing eighteen samples in total, were studied. The tutors' feedback comments on the selected samples were counted, classified and categorised. Some comparisons and correlations across categories were then undertaken and a detailed interpretation of the responses was developed.

The selection of work from the particular six tutors was opportunistic, in that they had each submitted for assessment, the three selected samples as representative examples of their personal best efforts, in their course portfolios. The samples were produced in context. The feedback samples reflect the sequential engagement of the tutors with first year student writing over a range of three different text genres. The samples are:

(a)   a case summary;

(b)   a short legal opinion;

(c)   a report on a court visit, focussed on the theme of 'access to justice'.

Some comparative material was included, to verify and contrast with the findings of the analysis of the feedback data.

4.1 The tutors and the students:

Sixteen tutors were selected from sixty-four applicants, to participate in the Teaching Legal Skills course. Interviews, conducted by two of the course supervisors, were held to select the tutors. Factors scored were: academic record, interpersonal communication skills, personality, and an indication of commitment to the rigorous demands and workload of the course. In addition, most applicants submitted writing samples. These factors accord with the

results of Cheslik's survey (1994:402), in the United States, where respondents identified: strong inter-personal communication skills, dedication or willingness to work, good writing skills, and patience and kindness, as characteristics commonly thought necessary in successful tutors. Twelve females and four male tutors were appointed at UND, in 2000.

In general, the tutors were all academically 'above average' students, some of them being at the top of the class rankings. In our selections, consideration was given to achieving a group of tutors that would be fairly representative of the student population that they would teach, in terms of race, culture and language group.

Feinman suggests:

> 'the group of (tutors) should include diversity of personality and of background. The gender balance and the minority groups represented within the (tutor) group should be representative of the overall student population' (1992:277).

Although strong, extroverted personalities probably predominated, we were mindful of the fact that some balance was needed, to accommodate different student learning styles. Thus, there were some personalities amongst the tutors in the group, who appeared to be less 'outgoing', (albeit a small percentage of the tutors), during the interview process.

The first year students whose work was commented upon represent a random cross-section of the first year law class. No indication of their gender, race or language group has been given, as this was felt to be a variable, which would have no direct relation to the purpose of this study. It is likely however, that the tutors' personal knowledge about their individual students, would affect the comments they made.

Where possible, an indication has been given of the final mark assigned to the second draft of the student's work, for the purpose of a possible correlation with the quantity of the feedback given by a tutor, but marks are not awarded for first drafts, which were analysed in this study.

4.2 Analysis of the tutors' feedback comments:

(a) Case Summary:

This exercise, completed in the sixth week of the first semester, is a fairly rigid assignment, which has been modelled for the students, according to a formulaic application of prescribed headings. The aim is to guide students in acquiring the skill of summarising legal cases. Students are required to read, analyse and identify component parts of a court judgment, written in a totally unfamiliar discourse.

The difficulty in commenting on a first draft and in providing helpful guidance is to avoid overly directive responses. Tutors were supplied with a sample

model answer and specific marking criteria. The allocation of marks indicates the relative significance of each section. Some degree of discretion, as to the accuracy of one section, was permitted to the tutors, but in general, the marking guide was detailed and specific, with very little room for variation or individual creativity.

Table A1 indicates the total number of edits, or alterations made on one written text by each of the six tutors (Column 2). These include: deleting or bracketing a word, inserting a word/s, a substituted word/s, and spelling/grammar corrections, made to the student text.

In column 3, the number of written 'markings' made on a case summary is recorded. These include any comments of one or more words, written on the page - or numbers/letters written on the page, which refer to notes (of one or more words in length) on an opposite, or later page.

In column 4, the number of markings that are phrased as 'comments,' is recorded; and in column 5, the number of markings that are framed as 'questions,' is recorded. A final column, indicating the mark given to the second draft of the writing has been included in an endeavour to ascertain whether the success of the student relates in any way to the amount of feedback that was considered necessary.

Table A1: **Number of edits, written comments and questions on case summaries**

Tutor	Number of alterations/edits on student text	Total Number of markings	Comments	Questions	Final mark for second draft /50
A	9 edits	8 numbered notes (on opposite page) + Introductory note	3	5	43
B	1 edit	1 + endnote	-	1	32
C	9 approval ticks; 1 X to indicate error	9 +endnote	2	7	34
D	5 approval ticks +6 edits	4 + endnote	3	1	
E	-	5	3	2	35.5
F	-	10 numbered notes (on opposite page) + endnote	3	7	35

The average (mean) number of edits/alterations made on a text is: 2.6 per page; the average number of comments or questions is: 6 per case summary. Significant variance can be seen within the range. The appropriate number of feedback comments on a text is an issue that is debated in the literature. In Enquist's survey (1999:1129) of expert opinions, highest on their list of effective teaching techniques was the strategy of limiting the number of comments on a given paper. 'Marking everything' was top of the experts' list of 'potential pitfalls' in critiquing (2000:1145). Jamar (2000:4) recommends restricting the number of comments per page to three, unless a student specifically asks for every error to be noted. Restricting the number of comments enables students to focus on a limited number of errors. Mostaghel (2000:5) disagrees with this view, and chooses to give extensive commentary. She warns students in advance what she will be doing, and explains her reasons, which are twofold: (i) if she does not point out their writing problems, who else will? (ii) she does not want students to have a false sense that everything they are doing is correct if this is not the case.

Those tutors who tend to write a significant number of comments use a question format more often, when giving their feedback. The use of questions is recommended as a commenting technique by many experts because it promotes learning, ensuring there is an active, ongoing dialogue between the teacher and the writer. Baker (2000:9) advises the use of 'responsive questions instead of orders', as it is desirable to help the student discover and select revision strategies from an array of solutions. In a study of student responses to feedback (Enquist, 1996:179), it was clear that questions designed to lead the student to an answer are preferred to terse or cryptic questions. However, overuse of questions as comments, particularly brief questions, like: 'why?' or 'are you sure?' made the critique 'feel a bit like a cross-examination' (1996:181). Questions that place the responsibility for learning on the student, and challenge her thinking, promote lasting learning and can be distinguished from those that simply help a student fix a problem (Enquist, 1996:190-191). However, this is a difficult distinction for inexperienced teachers to draw.

Some comments were commendations on a particular aspect that had been well done, while other comments identified errors (see Table A2 below). Most tutors wrote an endnote (4), with one tutor providing an introductory note. The importance of endnotes emerged from Enquist's study (1996:155-160) of student responses to feedback, in which they were rated as the most important feature of a critique. Endnotes, which summarised the feedback contained in the paper, and identified positive and negative aspects of the writing, had the most significant effect on the respondent's overall evaluation of a critique. Students preferred endnotes that were specific, and those that provided 'an overview critique'. A combination of marginal comments, that highlight specific problems where they occur, together with a summarising overview, that consolidates the reader's views in an endnote, seems to be most helpful to writers. Other effective possibilities mentioned in Enquist's survey of experts, are: a summarising note on the cover sheet, which students read first, and which puts the marginal comments in context; or end

comments that are written at the end of each section of a paper (1999:1135, n 20).

There appears to be no necessary correlation between the quantity of feedback given and the final grade assigned to the second draft of the pieces. It is likely that the writer's reaction to the feedback, and the extent to which she uses the comments to revise the draft, would have the most important effect on the final mark.

Table A2 indicates the particular aspects of the assignment to which the tutors' comments and questions relate. Relevant categories were: comments/questions relating to (1) the understanding the assignment instructions; (2) the accuracy of the law/content; (3) the organisation of the writing/form.

Table A2: **Aspects of assignment to which comments/questions relate:**

Tutors	Assignment Instructions	Accuracy of the Law - Content	Organisation of the writing - Form
A	1	5	1
B	-	1	1
C	1	5	1
D	1	1	1
E	1	3	1
F	2	6	-

Tutors A, C and F who wrote more comments or questions seem to focus these on correcting content inaccuracies, or errors related to law. No specific mark allocation was made for language usage or writing skills on this assignment, thus tutors were at liberty whether to highlight any or all errors of form, such as spelling/grammar or sentence construction errors, provided these did not impede an understanding of the text.

Most of the results (except for Tutors B and D) contradict the findings of Siegel (1982:304), where inexperienced writing instructors tended to identify almost as many errors of content, as errors related to form (a ratio of 3:4). A possible explanation for the tutors' focus on content (legal knowledge), rather than form (grammar/syntax errors), is that this aspect is prioritised by Baker (2000), and they feel less competent in identifying the latter type of errors.

In a study of English composition teachers, identifying language errors in college students' papers (Greenbaum and Taylor, 1981:172), 35% either omitted to label the errors, or labelled the errors they marked inappropriately. A workshop, conducted on the results of the study, established that many writing instructors feel insecure about their competence to identify usage errors (1981:174). The tutors in this study had received no formal instruction on language errors and thus they may not feel adequately prepared to address language errors.

On reviewing the assignments for tutors' failures to identify inaccuracies in content, and particular problem areas in students' writing, the following pattern of omissions was discerned:

Tutor A: overlooks an excessive number of grammatical/spelling errors as well as errors in use of legal discourse;

Tutor B: fails to indicate several important omissions relating to the law, or to highlight redundancies; no specific guidance is offered for improving the assignment;

Tutor C: overlooks only minor grammatical errors - 2 incorrect prepositions;

Tutor D: does not draw her student's attention to numerous grammatical and spelling errors (or suggest the use of a 'Spell check' type function, or proofreading); no specific indication of how to improve the piece;

Tutor E: overlooks minor grammatical errors, such as incorrect prepositions; indicates errors and omissions, but gives little guidance on how to improve the piece;

Tutor F: failed to correct an inaccuracy of law on one section of the summary.

Thus, overall, the tutors implemented an effective prioritising of concerns on the assignment, in accordance with the training they had received. They appropriately identified errors in content, rather than form, although it might have been advisable to draw attention to some repetitive patterns of spelling and language errors.

From a perspective of (a) balancing positive and negative feedback; (b) considering the tone of the written comments, particularly the endnote; and (c) the balance of prescriptive (directive) feedback to exploratory comments, the following tabulated observations can be made:

Table A3: Tone and Type of Feedback:

Tutor	Positive/Negative balance	Tone of the comments	Prescriptive (directive)/ Exploratory (non-Directive) balance
A	Commends 3 times; addresses mistakes and omissions in text in an orderly, detailed manner *E.g., Is this his first offence? Mention the sentence imposed in the first offence.*	Polite, respectful, personal (uses writer's And reader's names); helpful *E.g., T, The comments on the following pages are intended to help you with your final draft. Consider the questions posed and see if you have the answers.*	Explains errors, gives rationale, refers back to notes, extends by questioning, suggests re-reading, re-phrasing

B	No commendations	Very sparse, vague and general; no personal names used *E.g., Try to minimise your facts to NB ones and avoid repetitions, e.g., facts in prior proceedings and in key facts are materially the same.*	Judgmental comments, no specific guidance offered, minimal critique *E.g., You may omit the info. in the brackets here.*
C	Ticks and 1 terse commendation; accurate indications of errors/ omissions. *E.g., An encouraging first attempt. Please follow the guidelines provided.*	Quite blunt, short, direct questions; impersonal, signature at end. *E.g., Do you think the court has the power to alter the sentence?*	Brief questions highlight omissions; provides useful tips and guidelines for improvement; somewhat prescriptive
D	Ticks and one commendation; no clear indication of problem areas - too positive *E.g., If you correct this default you can become an effective researcher and summarise cases concisely and correctly. T.*	Personal, uses name often; friendly endnote; unjustifiably effusive. *E.g., Hi C, I'm pleased that you have your feet firmly fixed (sic). You got the issues and the ratio correct. The obiter dicta needs to be identified correctly.*	Prescribes what needs fixing without suggesting how; no useful guidance.
E	Commends one aspect; adequately indicates errors and omissions. *E.g., An obiter dicta is a statement made by a judge in passing. Avoid comments that refer to the facts of the case. Re-do this part of your discussion.*	Terse comments; impersonal, economical. *E.g., What if there is not that degree of difference?*	Indicates omissions by focussed questioning; explains student's misunderstand -ing on one aspect; suggests student 're-do this part'; 'don't include this'; directive.
F	3 commendations, balanced and detailed comment for each subsection; polite *E.g., Excellent presentation. Very neat and well-organised. Thank you.*	Dialogic, chatty, personal, apologises for quantity of comments.	Effective sequential questions provide guidance; extremely helpful and responsive to writer *E.g., Is this a fact or is it someone's opinion? This is a significant point. Would it not be appropriate to include here the facts of his previous offence?*

Tutor A added a comment on her feedback, inviting the student to meet for an individual conference on the feedback, while Tutors D and F added an open invitation to their students to ' feel free to contact me should you wish to discuss my comments'. Only Tutor D is overly effusive and her colloquial commendation seems misplaced and unjustified. In her responses to the

tutor questionnaire (See: 4.5 below; page 75) she hints at some insecurity about making negative comments to students, which is evident here.

Tutor A added 'I hope you don't mind – I have corrected grammatical mistakes'. In her endnote, Tutor F also was apologetic, saying that the student should not feel disillusioned or overwhelmed by the vast quantity of feedback, but rather the comments were intended as guidelines for improving the work. These comments suggest an ambivalence that the tutors may feel, in their role of critiquing work of students whom they know personally, and are fairly close to in age. The tentative, almost apologetic tone hints at some uncertainty or lack of confidence. At this early stage in the semester, it is likely that they have not reached a 'comfort zone' in commenting. However, undoubtedly their respectful approach to the students' texts avoids the situation described by Brannon and Knoblauch, where:

> 'the reader assumes primary control of the choices that writers make, feeling perfectly free to 'correct' those choices any time an apprentice deviates from the teacher-reader's conception of what the developing text "ought" to look like (1982:158).

(b)   Short legal opinion:

This assignment indicates the increasing level of difficulty expected from students by the twelfth week of the semester. A sample opinion is included in their course materials. The substantive law is taught incrementally, in small group exercises and discussions, over the two weeks preceding the first draft. It is the students' first attempt at a piece of legal writing, which combines a synthesised application of statute law and three case summaries to a set of facts, with problem-solving, in order to assess a convicted person's likelihood of success in an appeal to a higher court. The exercise is based on a case simulation that students work on through the last eight weeks of the first semester at law school.

The appropriate use of legal language becomes important for coherence at this stage. Writers must use discourse conventions and legal terminology, to formulate a statement of law, which is then applied to a fact pattern, using analogical reasoning. The intellectual demands require a complex integration of abstract and applied understanding. The goals of this task are to inculcate students into using the structures of legal analysis as a framework for developing a logical argument. This 'scaffolding' guides students in using substantive law to support or refute a client's case.

For the first time, the marking criteria (20% of total mark) determined that tutors should explicitly address the students' writing skills such as: appropriate grammatical and lexical choices, use of correct citation forms, and the use of headings and paragraphs. Baker's reading (2000:7) emphasised that the first priority in tutors' feedback was to be the students' understanding of the assignment, and then their understanding of the legal concepts (content/ideas), followed by attention to the organisation of the writing (form).

Clearly here, the tutors focussed most of their efforts on the intellectual and structural complexities of the assignment, rather than on language usage.

Table B1 contains a summary of the number of edits and alterations on each script, the number of comments and questions, and the number of pages of each assignment. It was not possible to consider whether students had revised their drafts of these opinions in the light of the tutors' comments, and whether their final draft was an improvement, as the lecturers assessed the final drafts. This system has since been discontinued due to complaints about inconsistencies, from both students and lecturers.

Table B1: Number of edits, markings, comments, questions, and number of pages of each short legal opinion :

Tutor	Number of alterations/ edits on student text	Total Number of markings	Comments	Questions	No of pages
A	7 edits	26 + endnote	8 numbered notes – 20 different points (on opposite page) + 4 on text; +6 commends	4	3
B	3 edits	3 + endnote	3 (in endnote)	1	8
C	33 ticks, 13 edits, X to indicate error	47 +endnote	12	21	8
D	3 edits	22 + endnote	16 + 2 commends	4	7
E	3 edits, 16 underlines, 2 circles on text	43 +endnote	15	25	5
F	8 edits	69 + endnote	8 +10 commends	35	5

Every tutor used an endnote, but there is no shared sense of what an appropriate number of feedback comments is: Tutor B wrote only 3 times on her script, while Tutor F wrote 69 times on her script, when in fact Tutor B's script was three pages longer than that of Tutor F. Again Tutors C, E and F used questions to provide most feedback, but Tutor A did not follow her previous pattern. Tutors A, D and F made use of commendatory feedback, while Tutor C opted for ticks to indicate her approval. Tutors prioritised errors in content (see Table B2 below), and responded to almost every inaccuracy of law, without restriction.

The following table indicates the particular aspects of the assignment on which the tutors focussed their attention:

Table B2: Aspects of assignment to which comments/questions relate:

Tutors	Assignment Instructions	Accuracy of the Law	Organisation of the writing
A	2	13	7
B	1	2	- .
C	2	28	6
D	2	9	5
E	1	32	5
F	3	35	9

On reviewing the assignments to obtain an overall sense of the accuracy of the tutors' comments, it appears that:

Tutor A's detailed numbered comments on a very weak assignment, which omits an entire section in the first draft, provide a very close analysis of each section of the paper. She combined interlinear comments with numbered comments on the opposite pages, and identified almost every discernible inaccuracy or omission. On this assignment she has used questions less frequently, as there are many serious omissions that she explained in detail.

In her endnote, she appropriately commends the writer, and then reminds her of the critical omission of an important section. Her end comments summarise and prioritise for the student the key areas to address, as recommended in Enquist's study (1996:155-6). This tutor also requests a meeting with the student to discuss the feedback.

Tutor A:

Examples of comments (numbered notes)	Examples of questions (interlinear)
C. You have correctly identified the rule of law. Well done.	This is a difference?
You have however combined your rule of law with your application heading. You need to separate these two.	Is it in the interests of justice to admit the evidence?
D. In your conclusion refer to which factors support your argument/conclusion as to whether the evidence should be admitted.	Why?
Remember, the judge has a discretion, which he has to exercise by weighing the factors.	Do you think that these factors indicate whether the hearsay should be admitted? If so, you should explain in your application how they should affect the admissibility of the evidence. (in numbered notes)
C1. Referring to the words in brackets- I am unsure of what you are trying to convey. I think that you left out a word.	

Endnote:
T,
You have demonstrated that you understand the work. Please remember to include an Application section and to expand you Rule of Law section. Further, type the entire document

in black as it looks more professional. Please make an appointment to see me so that we can discuss the feedback.
Thanks, Y.

Tutor B again has given completely inadequate feedback: a few, broad general criticisms that fail to pinpoint the improvements that the student should attempt. Her failure to comment on serious defects in the organisation of the paper, to draw the writer's attention to correct referencing methods, and to make recommendations about omissions is problematic. However, she requests a meeting with the student, where further issues might be discussed, and in her endnote she summarises three weaknesses in the paper. It is hoped that in a conference, Tutor B elaborated on her cryptic comments. Closer supervision of this tutor could have prevented a student receiving such poor feedback. Ramsfield (2001) writes that she has discovered from experience that a strict monitoring system is necessary: 'each paper is submitted to the professor for comment and approval before being returned. In one class, both the professor and the tutor sign the end comment'. Although this is time-consuming, it would avoid prejudicing students who might receive this type of minimalist feedback from a tutor.

Tutor B

Only an endnote written	Examples of questions
	What next?

Endnote:
1. Your facts should be minimised to include the incident and factors relating to the hearsay issue, e.g., Mr Fourie- only the hearsay issue is relevant here.
2. You did not include Hlongwane case, let alone mentioning it.
3. I am concerned that your opinion is very broad and more into your own opinion than the available law - your application is more general (non-legal). Remember it's the incorporation of the available law into your case (Singh). Please see me. N.

Tutor C, commenting on a particularly good paper, hones in analytically on every inaccurate legal detail. By using questions, she extends the writer's ideas. Her focussed questioning exposes inconsistencies in reasoning, and points the writer toward logical connections in the argument, which need to be made. The questions are well phrased and open-ended, requiring the writer to engage with the issues raised. The use of imperative verbs adds a commanding, rather than a collaborative tone to certain comments. Although some of the remarks are terse, blunt, and even judgmental, the tutor has not overlooked any important substantive or writing issues, to the extent that there are perhaps too many feedback comments. The endnote begins by 'damn(ing) the paper with faint praise' (Lindemann, 1982:221) and although it diagnoses the major problems in the writing, it is unhelpful in that it offers scant guidance to the writer. Lindemann (1982: 232-3) suggests that a carefully worded endnote should summarise the comments and establish a goal for the next paper, in an encouraging way.

Tutor C

Examples of comments	Examples of questions
I don't see how this is relevant	Why did the magistrate admit the hearsay evidence?
The evidence will be admitted in terms of S 3(1) (c). Here you don't have to have the agreement of both parties.	What was the result of the trial in the *court a quo?*
Insert here. It makes your argument more logical.	What was the *ratio* of *Mpofu?*
You seem to be repeating this whole controversial issue.	Why did the witness testify in *Hlongwane?*
Clearly set out Officer F's version compared to Z's version.	What are the implications for admission in regard to civil *vs* criminal trials? When is the court more likely to admit?

Endnote:
An encouraging attempt. However I have the feeling that you are very confused about when evidence should be admitted and when not, and you work conveys this confusion. Your rule of law section in regard to Section 3 needs a reworking. Signature.

Tutor D phrases her feedback mostly in the form of imperative, directive comments, which begin as: 'try to...' or 'think about...' or 'you need to...'. They are prescriptive and hint at a commanding note, yet they succeed in communicating a 'chatty' conversational tone. In two places, the tutor sets out very helpful examples for improving the organisation of the writing. Her analysis of what is wrong with the piece is extremely accurate, advising the student to structure and organise her work according to the framework provided by the statute and case law, but at times she tends to rewrite phrases or replace the writer's text with her own words. Although the feedback may be overly directive, it does provide effective guidance for the writer. In two places on the paper, the writer is asked to arrange to see the tutor personally and the impression created is of a very personal collaborative effort to motivate the writer to improve her work. The endnote reflects the tutor's unique, personal style of commenting, and reiterates her main concerns in the paper.

Tutor D

Examples of comments	Examples of questions
Try to quote the actual hearsay testimony. At best try to summarise it- either is acceptable.	What type of application is it?
Give the magistrate's reasons for admitting the hearsay evidence in the *court a quo*.	What type of a case is it?
Add these into your facts and it should be fine. No need to be lengthy when trying to add the three points in - short and precise is good.	In other words, did the magistrate err in admitting the hearsay evidence in view of the factors listed in S 3(1) (c) of Act 45 of 1988?
Think about the issue very carefully. What you said does not seem to be wrong altogether. Maybe you could phrase it another way.	But what about arranging this part of the work under the seven factors listed in S3(1)c?
Under the rule of law you need to summarise the three cases. In that summary you need to put in the *ratio* of each case, i.e., *Cekiso:* Hearsay evidence tendered on the question of the identity of the accused....	

Endnote:
However, you seem to have a good understanding of the cases. I know that. But you need to show the examiner that you know what's happening. Organising your work properly could aid you in doing so.
P.S., C, please make an appointment to see me before Friday...
Thank you,
T.

Tutor E, commenting on a very good first draft, devotes most of her attention to questioning the writer, in order to highlight omissions in the argument and to extend some of the writer's incomplete thoughts. The blunt questions focus attention on the content deficiencies and on some minor organisational problems in the paper. Yet, they create a very immediate sense of an ongoing dialogue between reader and writer, with the use of personal pronouns, indicating the reader's direct and personal response to the writing. Siegel (1982:307) recommends this personal response to the text, used by experienced teachers, when they comment as 'lively, sceptical, but interested readers'. Grammatical errors, redundancy of expression and syntactical mistakes are mostly overlooked, possibly because the tutor fails to notice them, or she is unsure of how to correct or classify them. The tutor herself often includes careless spelling errors and uses several odd abbreviations in her comments. Enquist remarked in her study that the biggest surprise in the students' evaluations of instructors' critiques was:

> 'that the students never criticised the instructors for their own writing errors. Occasionally, different instructors would omit a word in a margin comment, and some even had numerous typographical errors in their typed end comments. Never once did any ...students mention these errors' (1996:186)

Several directive comments by Tutor E recommend strategies for addressing specific inadequacies in the piece, and the writer is commended for her 'promising work'. In the brief endnote the writer is advised to 're-do' her work, taking the comments into account and is wished 'good luck', but no specific strategies or solutions are suggested.

Tutor E

Examples of comments	Examples of questions
You need to set out your rule of law clear(*sic*) i.e. hears. evid. shd.(*sic*) not be admitted unless a court, after weighing and balancing the 7 factors...decides it is in the interests of justice.	So what did the magistrate say in admitting the hearsay evid. and what was the decision of the *court a quo?*
You can use this case for the probative value of the evidence.	What was the *ratio?*
Discuss your cases separately and go to the Act and note the different factors. Use the relevant cases were (*sic*) applicable.	Why did the court think it was in the interests of justice?
You don't have to repeat this in your footnotes, but only the year, volume and where the matter was decided (the underlined part).	What about *Cekiso* and *Mpofu's* case?
Please put the factors clearly and underline them if need be.	How is it tested?

Endnote:
Your work is promising. Try to use case law where applicable and read my comments carefully and try to redo your work, taking the comments into account. Good luck!

Tutor F again writes copiously in regard to every aspect of this paper, which is an excellent first draft. While she commends the student many times, these comments are not always sufficiently specific to indicate what was done well. Her use of questions, sometimes a series of questions, very effectively illustrate to the writer, a way of thinking about legal issues, exposing the writer to the steps in the process of developing her argument. These comments act as:

> 'a model for the kind of reading we ask a student writer-as-reader to do, asking questions, monitoring progress, and provoking second thoughts' (Berger, 2000:60).

Tutor F again creates a 'conversation' with the writer, following through the paper, in a personal and responsive dialogue. As Lindemann comments:

> 'the questions create a kind of dialogue between (the student) and me. In answering them, (the student) must reread what he's written, eventually learning to ask similar questions of subsequent drafts' (1982:230).

However, at the end of the feedback, which is consistently communicated in a gentle, collaborative tone, there is a more global or overall diagnosis, that the student needs to order her argument more effectively. This helps to offset the sense of being overwhelmed by the weight of so many comments on each page.

Tutor F

Examples of comments	Examples of questions
Remember to state whose version of the events this was- Where in the transcript can we find this?	Do you think it would be possible to re-state the facts in a more concise manner? e.g. think about whether every detail is relevant?
NB: In order to fully understand the operation of the law, we must explore what each factor means and how it has been interpreted by the courts in the past.	Can you think of a reason why that would be important?
Try to analyse each factor in the light of the decided cases.	Where did the magistrate get this discretion from?
Explain how this would have been an influencing factor? Perhaps it would have been easier if you had explained the meaning of this first.	Do you think it would be relevant/significant to mention that the conviction was a direct result of the magistrate's reliance on the hearsay evidence?
Remember, we are concerned with whether a reviewing judge would conclude that the evidence should be admitted/excluded!	What other factors did the court analyse?

Endnote:
A very good first attempt! You have made some good arguments, but they tend to get a bit mixed up because you jump from factor to factor and back again. Perhaps it would be helpful

to explore each argument in terms of the factors separately. Remember to also back up each argument with the cases!

The following table reflects the tone and character of the tutors' comments on the short opinions:

Table B3: Tone and type of feedback:

Tutor	Positive/Negative balance	Tone of the comments	Prescriptive (directive)/ Exploratory (non-directive) balance
A	Excellent balance: 6 commends; points out omissions and errors	Personal, responsive to writer, engaging	Prescriptive comments refer back to notes, cases; very specific recommendations
B	No commendations	Terse, judgmental, not collaborative, partly sarcastic	Critical comments fail to suggest practical steps to guide improvements
C	Many ticks; compliments the 'attempt'; questions used to highlight errors	Judgmental, brief, not collaborative, imperative: commanding	Specific questions on text give guidance, endnote unhelpful and prescriptive
D	2 commends; accurate diagnosis of deficiencies, exhorts to amend	Personal, chatty, dialogic, encouraging and motivational	Prescriptive, imperative; specific amendments suggested; commanding; no overview, or general suggestions on how to improve
E	Commends generally and sparingly: 'promising work'; terse questions used to indicate omissions;	Dialogic, using 'I' and 'you' many times; yet, an adversarial/ authoritative tone in blunt questions- challenging	Prescribes directly what needs to be done to specific parts, to improve paper; questions highlight omissions; no general summarised diagnosis at end
F	10 commends; detailed questions draw attention to omissions and inaccuracies	Extremely encouraging, gentle, responsive to writer; conversational; uses 'we' frequently in commenting.	Exploratory feedback challenges & guides writer to improvements, shows how to reason, explore, reach conclusions

A consistency appears in the tutors' individual styles of giving feedback. These idiosyncrasies at times seem to undermine the pedagogical goals emphasised in the training, as regards: establishing a collaborative tone, writing summarising endnotes, ensuring specific commendations, and diagnosing analytical weaknesses.

Tutors A, C and F once more diligently provide copious comments on every aspect of the work they are reviewing. Whether in fact this is confusing, or too much for a writer to digest is a question that should be asked. Enquist comments:

> 'While it is hard to find the right balance, the message from the students seems to be to be more selective about the points raised in comments

and then to flesh out these selected comments to be sure that they are clearly explained to the student' (1996:189).

Thus, a more discerning approach, in which only a limited number of significant problems are identified in a first draft may be preferable, but certainly, Tutor B's approach is inadequate. The middle ground, somewhere between overburdening a writer with identifying every incorrect detail, and a minimalist approach that fails to identify serious deficiencies in a first draft, demands a combination of some specific textual interventions, together with an overview diagnosis of possibly three major problems. Positive and negative feedback should be carefully balanced, and expressed in a tone that is encouraging and motivational for the writer. Cohen et al (2000:2) remark that: 'positive presentation of the comments, together with enduring optimism, are important considerations.'

The comments on this assignment suggest that where the intellectual demands are challenging, attention to surface-level writing errors is not given priority by a marker. The more obvious problems of conceptual accuracy and logical structuring of the argument take precedence. Zamel corroborates Williams's view (1991:14-15) that novice writers tend to display an inordinate number of surface-level errors in difficult assignments:

> 'attempting to deal with intellectually complex and demanding writing assignments may result in breakdowns or setbacks that may not be evident in other kinds of writing' (1986:95).

Most of the tutors focussed on assisting students to align their answers as closely as possible to the model provided. The tutors' levels of success vary, but overall, other than Tutor B, they have been able to indicate clearly to the writers the areas in the papers that require attention.

(c)   Report on court visit:

The final piece of writing does not reflect a particular genre of legal writing, but rather, it is intended to develop the skills necessary for producing a well-structured and informative report. Students, now in their second semester, were required to document their personal experiences and reflections following on a visit to their local community magistrates' court. A discussion relating to the lecturer's expectations of the students' efforts was conducted with the tutors, but they were given much more discretion in commenting as there was no clear model of a 'correct' answer. The marking criteria divided the total marks equally between the following aspects:

(i)   thoroughness of the interviews; (with three community members and three court officials)

(ii)   quality of the court observations;

(iii) understanding of the obstacles to accessing the legal system;

(iv) practicality of the proposed solutions and the discussion of the impediments;

(v) clarity of expression of the ideas.

Thus, the students' submissions were expected to be more diverse, allowing for personalised feedback that would address the particular writer's needs. For this reason some of the classifications of feedback comments and the tables have been varied. The tutors assumed responsibility for marking both first and second drafts of this assignment and for assigning the final mark for the piece of writing.

Table C1 once again indicates the number of comments written on each script, as well as differentiating the comments from questions written on the text. The number of pages of each paper and the mark awarded for the final draft are included.

Table C1: <u>Number of edits, comments, questions, number of pages and final draft result of each report :</u>

Tutor	Number of alterations/edits On student text	Comments	Questions	No of pages	Result on final draft
A	12 edits	14 numbered notes – 20 different points (on opposite pages) + 4 on text; +12commends	24	10	80%
B	-	9	6	8	67%
C	61 edits	8	11	9	68%
D	8 edits	9 +2 commends	18	5	64%
E	21 edits	9 + 1 commend	31	6	80%
F	23 edits	16 numbered notes- (long) 4comments - mostly questions (on opposite pages) +6 commends	30	11	88%

Again, Tutors A and E, and Tutor F make use of many questions in providing extensive feedback. The papers they commented on were exceedingly well done, even in first draft, thus it is not surprising that those three students achieved the highest final results on their second drafts. No marks were awarded for first drafts.

Because of the 'openness' about the 'legal' content of this assignment, a general qualitative evaluation of each tutor's feedback was made. This is a personal assessment, according to my perception of the task, and also, in accordance with the intended purpose of the tutors' role in giving feedback on

first drafts. It is based on a close reading of each student paper and the tutors' feedback, and is an overall assessment of:

(i) whether the tutor accurately identified positive aspects as well as errors and omissions in the paper;

(ii) whether the tutor made clear to the writer what had not been done adequately in the first draft;

(iii) whether the student would be able, after reading the feedback, to improve the paper.

Tutor A: This is a paper that was extremely well done for a first draft. Tutor A correctly praises the accuracy and quantity of interesting information recorded by the student, and she commends the identification of obstacles in accessing justice. She mentions the lack of reflective analysis in the paper - the need to 'make meaning' of the observations. There is an excellent balance of praise and critique maintained throughout. Questions on each section indicate the gaps in the narrative: asking the writer to give examples, or asking what the response or reactions of various persons observed in court were. Tutor A's decision not to mark every punctuation error or grammatical mistake is a strategic choice I believe, not to distract from her commenting priorities. A note, using personal names, on the front cover of the paper asks the student to arrange a meeting, and the endnote summarises the feedback.

Tutor A combined summary comments for each section, as well as a global endnote, which results perhaps in excessive feedback. Gionfriddo (as reported in Enquist, 1999:1135, n20) writes end comments at the end of logical sections of papers, as she is concerned that end comments at the end of a paper may be 'too vague and general', and it is difficult to spend that extra time to draw everything together for a student at the end of a paper. Tutor A has provided thoughtful, responsive feedback that offers very explicit guidance, which is perhaps difficult to avoid on a report like this, which has specific content requirements.

See: Appendix 6A for examples of pages 3b and 8a of the assignment.

Tutor B: She identifies the most obvious errors or omissions in the paper and the disorganisation evident in the writing. The tutor repeatedly draws attention to the gaps in information, in the need for the writer to provide detail, and in the need to reflect on the observations recorded. However, Tutor B fails to make any positive comments at all. The student shows a narrative enthusiasm in describing events in the Lesotho courts, which could have been praised. Horvath (1984:248) describes a study by Gee (1972), which concluded that:

> 'positive reinforcement is more conducive to healthy attitudes toward writing and so to writing improvement than is negative feedback or absence of response.'

Some assistance or examples to address weak syntactical and frequent lexical errors should have been attempted. The informal tone of the student's writing is inappropriate and merits mention. The use of headings and sub-headings is suggested, and the student is referred back to the assignment instruction pages. Tutor B gives practical advice on how to supplement the deficiencies in content, but offers no help with an organisational outline or thoughts on how to reflect on the information.

Despite being far too brief, the feedback does highlight the major deficiencies in a very weak paper. However, it is unlikely that the student would be able to improve this draft significantly without much more intervention. No personal names are used in comments on the paper, nor is a meeting with the tutor mentioned.

See: Appendix 6B for examples from page 6 of the assignment.

Tutor C: This tutor correctly commends the writer for his/her effort in conducting the research in a thorough manner. The draft is interesting and filled with informative observations. Many comments reiterate the need to use a formal register in such a research report. The imposition of the tutor's lexical choices and her editing of the text substitutes the tutor's style for the student's, without developing in the student the ability to self-edit. Horvath (1984:247) notes that comments which do a student's work for her should be avoided In order to encourage the acquisition of self-editing skills. So many alterations made on the text distract the writer from developing an overview of the positive and negative aspects of the paper. The emphasis also obscures the appropriate focus on ideas. This concern with surface-level issues possibly reveals uncertainty on the tutor's part, as to exactly what factual information should have been included.

Suggestions regarding omissions are helpful and directive, but comments such as 'elaborate' and 'use formal language' are too general to provide guidance. Sommers observed this type of 'uniform code of commands, requests and pleadings' demonstrates that teachers have a 'licence for vagueness' while students are told to be specific (1982:153).

The paper would have been improved by a more thoughtful analysis of the information obtained by observation, and by a reflective approach toward the reasons for the problems discussed on access to justice. No personal names are used in the endnote, and no mention is made of having a meeting about the feedback.

See: Appendix 6C for examples from page 9 of the assignment.

Tutor D: No positive comments are made at all, although the overall tone and the frequent use of the student's name suggest a collaborative interaction. The student's identification of problems within the justice system is accurate, but this is overlooked because the writer fails to substantiate her statements and provide sufficient detail. Tutor D correctly emphasises the need to include issues required by the assignment instructions. She provides

directive guidance as to omissions and she suggests the use of a diagram, of 'Spell check' to improve errors, and she asks for the writer's response to some observations. The inclusion of a questionnaire that was used as the basis for the interviews conducted is also suggested to the writer. In relation to language usage, comments such as 'rephrase' are not helpful. Tutor D does not balance positive and negative comments but she accurately diagnoses significant inadequacies and she offers concrete and practical suggestions as to how these could be remedied.

She attempts to diagnose the writer's omissions in the paper as behavioural issues: 'your first submission illustrates a lack of interest on your part'. The experts in Enquist's survey (1999:1150) caution against comments like this, which suggest that the writer has not worked hard or put enough time into it. Instructors are advised to 'assume good faith' on the part of the writer.

Yet, the tutor's tone communicates an enthusiasm to assist the writer. The endnote extends to one and a half pages, with an invitation to phone and to arrange a meeting to discuss the feedback. The use of 'commands' or prescriptive feedback, such as "Detail what you saw...'; 'Give reasons...'; 'Improve this...'; 'You need to work on this report...' appear overly dogmatic. Oates (as reported in Enquist, 1999:1146) mentions that this is often the result of a 'lack of confidence', where new teachers 'spot a problem' but are unsure about the solution. Instead, Oates recommends that 'reader-based' comments, such as 'I'm having trouble following this argument...' are used. These communicate the confusion or lack of understanding that the instructor is experiencing in an exploratory way that promotes learning by leaving the decision-making open to the writer.

In the endnote the comments deal with each section in turn, in response to the writer's structure, and then, according to the marking criteria. Together with the textual comments, this is possibly an overwhelming quantity of feedback for the writer to assimilate.

See: Appendix 6D for examples from page 5a of the assignment.

Tutor E: This tutor commends the writer appropriately for her efforts and her understanding of the requirements of the assignment. The tutor reveals her preference for focusing on legal discourse conventions, e.g., how knowledge is created in legal discourse - requesting that the writer substantiate her argument with references to legal authority. Her questions demand detail and challenge the writer's conclusions, which will direct the writer to improve the piece.

The paper lacks clarity from the reader's perspective but no mention is made of the confusing organisation and the absence of sub-headings or topic sentences, to separate different sections of the paper. Tutor E indicates the need for reflection on the observations, but she does not note the omission of certain content, including details relating to the community studied.

Her recommendations to use 'Spell check' (4 times) and to state the writer's opinion on the observations, give practical guidance but asking the writer to improve her grammar, and similar vague comments are unspecific. The tutor's lack of attention to repetitive writing problems ignores serious issues of expression and lexical choice.

The tutor's use of the writer's name three times and her comments such as: 'I am glad...', 'Why did you stand up?', 'This is good, S.', Do you know?', 'Did you say/think...? 'What did you think?' seem personal and immediate. Siegel (1982:305) notes that this type of conversational engagement, concerning the subject of the paper, or disagreements, jokes, and personal expressions are used effectively by experienced teachers. Comments like these indicate that the teacher is a genuine reader rather than an impersonal corrector. It is 'good practice, supported by theory.' Siegel claims that these personal comments make the novice writer aware that her work has a 'communicative effect' on the reader. By reducing the focus on writing merely as an exercise in form, such 'lively acts of communication' encourage and motivate the writer to improve her writing.

In a helpful manner, the endnote summarises the gist of the textual comments into three main priorities that the writer should address, and once more, Tutor D wishes the writer good luck for the final draft. Ramsfield (2001) writes that her first group of tutors wrote things like: 'Good luck!'; or 'Good job!' sometimes without any further comment, on papers. These were 'caught before they went back to students', but since that time, at Georgetown Law School, they have used a very strict monitoring system so that tutors 'don't slip'. Although such glaring deficiencies do not appear in these samples, (Tutor B's paucity of comments provide some responsive critique) it seems that a monitoring mechanism could be beneficially incorporated into the UND programme.

See: Appendix 6E for examples from pages 6 and 7 of the assignment.

Tutor F: This tutor correctly commends the writer for her careful organisation and her use of diagrams. The writer's attention to all aspects of the assignment instructions and her use of clear language is noted. Directive questions highlight the areas where the provision of background detail would enhance the report. No serious omissions are evident in the first draft.

The tutor advises the writer to take note of spelling and grammatical errors that have been edited on the text, without explaining her edits. Two theoretical issues arise here: (1) that writing instructors very often do not know how to describe usage errors (Greenbaum and Taylor, 1981:174); (2) Sommers (1982:155) observes that grammatical edits are inappropriate on a first draft as they distract the writer, and give the student a 'disproportionate sense of their importance' at this early stage. Sommers prefers responses about the meaning of the text, about breaks in logic, or missing information.

The tutor has commented thoroughly on a paper that exhibits very few flaws, but she has not made any overall diagnostic comments about the organisation

of the writing. A recommendation regarding proofreading, 'Spellcheck' or reading through by a peer for language errors, might have been helpful. Attention is focussed on error correction, rather than revision of ideas (Brannon and Knoblauch, 1982:162). The endnote expresses the tutor's appreciation of the writer's effort and presentation.

See: Appendix 6F for examples from pages 2 and 2a of the assignment.

Overall review: It seems clear, after reviewing these examples of feedback as a supervisor, that a combination of a few textual comments on each page, together with an endnote that summarises the main points of the feedback, is a helpful guide for providing an appropriate quantity of feedback (Enquist, 1996:188). A reader can easily discern the tone of feedback comments and in order to motivate a writer to improve her work, it is desirable to balance commendation with identifying a limited number of negative aspects in a student's paper (Horvath, 1984:248). In addition, alterations or edits made on a text, as well as commendations, need to be text-specific and require some explanation, if they are to be useful to the writer in the future (Sommers, 1982:152-3; Enquist, 1999:1146-9). The identification of deficiencies and omissions, especially surface-level errors, without a suggestion of the appropriate remediation, or some guidance to direct the writer toward a revising strategy or solution, is unhelpful. However, framing suggestions as engaging, responsive questions, which prompt the writer to make her own choices as to possible revision strategies, and thereby retain control of her text, promotes student learning (Brannon and Knoblauch, 1982:162).

In evaluating the tutors' comments against these 'theoretical benchmarks', it seems that each tutor demonstrates particular strengths, as well as tendencies to ignore aspects of sound theoretical understandings, to a greater or lesser degree. In a general sense, extended theoretical discussions, additional practical workshop-type exercises, and closer personalised supervision, identifying and addressing the individual idiosyncrasies, would be the most effective approaches to improving their practice.

4.3 Student Evaluations of tutors' feedback comments:

Each tutor was evaluated toward the end of the first year course by the students in her tutorial group. The evaluation questionnaire was administered by the course administrative assistant. The questionnaires were administered to those students who arrived at the tutorial on a day selected by the course director. The forms were completed in class, with an undertaking that the identity of students completing the forms would be confidential should they request this. Respondents were advised to consider their responses carefully as these would contribute toward the tutors' assessed mark for the Teaching Legal Skills course. From the beginning of the course the tutors had been advised that they would be evaluated several times during the course. The first formative evaluation was carried out after five weeks. The second evaluation took place at the end of the first semester. An informal evaluation was conducted half way through the second semester. The evaluation

summarised here reflects a summative assessment for the tutors, at the end of the second semester.

The evaluation form, modelled on one used by Baker at Northeastern University (Appendix 3) covers the following aspects: an open question on those aspects in which the tutor was most helpful, and least helpful to the student; the tutor's knowledge; the tutor's perceived level of interest in the student, the group, the course and in tutoring. Questions focussed on the conducting of weekly tutorials are followed by questions relating to the tutor's sensitivity to multicultural issues, about one-on-one student conferences, and then a detailed question that relates directly to the students' perceptions about their tutor's feedback comments.

Students must answer six questions, for each of which there are two, three, or four possible answers from which to select a phrase that most accurately describes their tutor's feedback comments.

The following table indicates the total number of questionnaires returned, and then how many students selected each answer as descriptive of their tutor's feedback comments:

Table D1: Students' Evaluations of Tutors' Feedback Comments:

	Tutor A	Tutor B	Tutor C	Tutor D	Tutor E	Tutor F
Total No. of responses:	9	9	9	10	5	8
1a. right mix of positive encouragement and critical comments	9	8	8	9	5	7
1b. overly critical				1		1
1c. not sufficiently critical		1	1			
2a. usually very clear	9	3	3	7	2	7
2b. reasonably clear		6	5	3	3	1
2c. sometimes a little confusing			1			
2d. often confusing						
3a. thorough and detailed	9	5	7	10	4	8

3b. limited but helpful		4	2		1	
3c. Insufficient						
3d. overly extensive						
4a. extremely helpful	9	5	3	7	2	6
4b. gave me an idea of what was expected		4	6	3	3	2
4c. could have been more helpful						
4d. too directive, too much editing						
5a. gave me an overview of my major analysis and writing problems	9	5	8	10	5	7
5b. gave me a partial overview		4	1			1
5c. did not give me an overview						
6a. feedback was timely	9	9	9	9	5	8
6b. feedback was late				1		

At the end of these questions was an open-ended question, which asked students to make specific suggestions concerning their tutor's feedback. Comments recorded were:

Tutor A: 'Her feedback was very, very helpful. At least I could tell the difference between my first draft and my final ones.'
'Y gave me so much feedback for our assignments and allowed and encouraged us to participate.'
'Always mixed the negative points with something positive I had done in my assignment.'
'It was excellent. Always very specific.'
'Lots of feedback that was very helpful.'
'Feedback was excellent.'
'Excellent. Very detailed. Helped in improving marks.'

Tutor B: 'Outstanding in helping us with our assignment work.'
'Maybe our tutor could be more critical of our work and also explain where we went wrong.'
'It was timely, critical and precise.'

Tutor C: 'Feedback was thorough and detailed. Can be more critical.'

Tutor D: 'Feedback is easy to understand and very helpful.'
'She should shorten her feedback and be more harsh with us. We like to be treated like adults.'
'Marked work should be returned to us early so that we can work through our difficulties at an earlier stage.'
'Feedback is excellent.'
'The feedback I receive from T. is extremely helpful.'
'She posed helpful comments on my work to improve the standard.'
'When marking our work she gives detailed comments and explains in full where we went wrong so that we are able to correct it.'
'Feedback is sufficient.'

Tutor E: no comments on 5 forms.

Tutor F: 'I really liked the method she used in feedback. She numbered an area in which there was a problem and wrote a note at the end relating to that number where there was sufficient space – most helpful comments and guidelines on assignments.'
'I thought that N's feedback was extremely effective and helpful. There is no room for improvement.'
'Produced critical replys (*sic*) on all assignments.'
'I found N to be extremely helpful in the manner that she taught us as well as her comprehensive feedback on assignments as well as individual meetings.'
'Maybe tutors should give general marks about the assignments.'
'Most helpful on assignments.'

Overview:

Tutor A's feedback is clearly rated by her students as not requiring any improvement, despite the fact that she makes so many comments on each piece of writing reviewed. Students identify that her comments are specific and detailed, balancing positive and negative critique. This seems to create an atmosphere of encouragement and affirmation of their efforts, so that they perceive the feedback helps them to improve their work. It is possible that other factors, such as a good classroom dynamic exist within this group, as the consensus reflects and suggests a consistently positive relationship between students and their tutor. In addition, the number of student commendations included in the open section reflects the students' personal feelings toward their tutor.

Tutor D also elicits many positive responses from her students, notably in respect of a shared sense that her comments guide them toward improved work. However, two students convey negativity in suggesting that a more critical approach would benefit them, and one student complains of a delay in returning work. In both cases, the students felt it necessary to justify these negative selections in the open commenting section. This class did not approve wholeheartedly of the tutor's feedback: at least three students thought her comments were not extremely helpful, nor exceedingly clear. In the analysis of the assignments, it was observed that this tutor's colloquial commendations were sometimes unjustified or even obscure.

Tutor F, who consistently provides very detailed and numerous comments, elicits many compliments, and it is notable that a student commends her method of numbering her comments and writing them clearly, where she finds sufficient space. One student appears to resent her critical comments on written work, which explains the one consistently negative selection in several categories.

In relating this back to the earlier analysis of writing samples, it is interesting to observe that the tone of these three tutors' feedback to their students, on both the case summaries and the short opinions (Tables A3 and B3) indicates an engaging approach, a personal, dialogic interaction between reader and writer, which encourages communicative exchanges between tutor and student in other contexts.

In contrast, students in the groups of Tutors B and C appear to be reluctant to comment further on their tutors' feedback techniques, despite the fact that students in these two groups were fairly divided on their tutors' ability to make clear what they meant, on the helpfulness of their respective tutors' feedback, and on the thoroughness and detail of the feedback comments. In both groups, the students did not unanimously approve the tutors' work. Considering Tables A3 and B3, the tone of feedback comments on those assignments was terse, judgmental and avoided the use of personal names or a dialogic exchange between reader and writer. It seems that such interactions probably disincline students to enthuse about their tutors when they are asked to evaluate the tutors' writing. It suggests that it is a case of emulating what you have become accustomed to in terms of a response.

The inadequacies of Tutor B's feedback become apparent in the rating given on four aspects of her commenting: helpful, clear, thorough and detailed, gave an overview. The division of the class on these selections indicates that students have not been satisfied with her feedback. Coming at the end of the semester, as summative feedback, these indicators are not particularly useful for the supervisor, but had they been evident earlier on in the semester, some intervention could have been planned to improve Tutor B's practice. Again, closer monitoring of tutors' work, as well as more frequent formative evaluations, that are discussed between tutors and supervisors, should ensure that such problems are addressed at an early stage.

Tutor E's group appears to have had a low attendance rate on the day of the evaluation, which may have contributed to the dearth of comment about their tutor's feedback. Other possible reasons could have been an extraneous variable such as time pressure. However, on reviewing Tables A3 and B3 in relation to the tone of Tutor E's feedback, it appears that it was also terse and judgmental or fairly blunt and harsh, despite the use of personal pronouns in her comments. Student exposure to such a tone may have had the effect of discouraging them from complimenting their tutor, or even of harbouring some resentment about the tone of their tutor's feedback comments. In a learning situation this is not a favourable context for developing positive relationships based on mutual trust.

4.4 Tutors' self-assessment of their success in giving feedback

As part of the assessment for the Teaching Legal Skills course, participants (tutors) were required to complete a self-assessment form, for submission with their assessment portfolios (Appendix 4). The self-assessment form reflected the apportionment of marks for each of the course outcomes: i.e., 35% for effectively planning and teaching one tutorial each week; 35% for giving feedback on student written work; 10% for reflecting in a journal, on multicultural issues in the class and in the curriculum; 20% for preparing and participating in class, in exercises such as role-plays and discussions. Tutors were asked to assign a mark for their own work on each aspect, and then to give reasons for awarding this mark. The purpose was to encourage the development of reflective and assessment skills in the tutors, and to give them an opportunity to contribute to their final assessment in a confidential and meaningful way. The course supervisors explained that the self-assessment marks would be considered in determining an appropriate mark for each tutor.

Tutor A awarded herself 78% for providing feedback, which was raised to 84% by her supervisor. This suggests an accurate internalisation by the tutor of the expectations and standards required in the task. Her comments reveal her concern for achieving a balance of positive encouragement and critique. She mentions that she 'gave detailed comments', 'corrected (the students) where the need arose', 'praised them where a good piece of work was attempted'. The tutor seems to describe exactly the considerations that shape her feedback. She is mindful of the need to relate to the student: 'tried to encourage and motivate my students', 'gave helpful comments to aid them in rewriting'. Her practice reflects Berger's concept of 'reflective rhetorical feedback', in which the teacher 'rhetorically sits next to' the student writer as the student 'navigates the loops of an in-progress writing' (2000:59).

Tutor B awarded herself 98% for giving feedback - which was reduced to 70%. There is clearly a substantial discrepancy between the tutor's sense of her success and the reality of her achievements. It speaks of a lack of alignment between the tutor's perceptions of the standards expected by the supervisors, which should have been addressed earlier on in the course.

She writes that her feedback was 'very constructive and critical', without considering the need for a balance between positive and negative critique – as evidenced throughout her three samples of feedback. However, Tutor B comments extensively on writing conferences held with students. This is confirmed in the student evaluations where three students recorded having had three conferences each, three students had two conferences each, one student met with the tutor only once and two students did not have any conferences. Tutor B also mentions that she discussed her feedback generally, when handing back papers at tutorials. This too, is referred to by one student as the reason for not attending any individual meetings with the tutor, in the evaluation questionnaire. The tutor explains that she considers writing conferences to be very important 'because the written comments are verbalised with maximum participation of the student'. She also explains, 'I then proceed to advise and correct them in all their shortcomings' – indicating

an emphasis again on identifying error and not commending aspects that were well written. It is this vision of feedback as a vehicle for identifying error, and for judging the written product, using comments to justify a grade, that undermines pedagogical goals such as motivating revisions in student writing.

Zamel (1986:96) suggests that teachers should participate in the making of meaning with the writer, by not presenting themselves as authorities. In the role of consultant, assistant or facilitator, they are more likely to establish a collaborative relationship with students. In offering judgmental commentary, the 'teacher-student equilibrium in an authentic learning situation' becomes unbalanced and impedes the creation of a reciprocal, dialectical process (Haswell, 1983:600). The tutors are particularly well situated to fulfil this 'consultative' role for the student writers.

Tutor C awarded herself 74 % for giving feedback, which mark was increased to 80%. In her typical terse way, she explains the mark by writing: 'I gave my students excessive feedback. Refer to my comments in the feedback samples of my portfolio.' It is clearly her way of letting her work speak for itself. It suggests a personality that prefers to use words sparingly and does not consider it necessary to elaborate. This may be her personal style of communicating, reflected in the terseness, the lack of dialogic engagement that characterises her comments on her student samples, and in the absence of personal names in her comments.

Tutor D awarded herself 80% for the feedback assessment, which was reduced to 76%. Tutor D's personality imparts a very personal and immediate tone to her reasons, similar to the tone of her feedback comments to her students. It is framed in the active voice; it is emphatic and direct. Her personal engagement with the personalities in her group and her perception of her role is apparent in comments such as, 'I write letters to them...' 'I give them adequate feedback in order that they may correct mistakes and polish their attempts to make the final draft near perfect'. This narrow, instrumental interpretation of the purpose of feedback neglects to consider the broader need to motivate extensive revisions on first drafts of writing (Sommers, 1992:281). However, an awareness of the need for balance in her critique is stated in, 'I try to motivate my students by commending them for tasks well done as well as telling them honestly what I thought of their work and where they could improve'.

Tutor E awarded herself 90% for her feedback, which was reduced to 76%, reflecting a significant disparity between the tutor's and the supervisor's perceptions of the type of feedback expected. She justified her self-assessed mark by explaining the process she adopts in commenting on drafts. It becomes clear that her sense of the priorities in commenting are not those suggested in the readings, or the workshop and training sessions. She explains, 'I made sure that whatever problem I saw in the student's efforts I comment about it, whether it be grammar or spelling or a mistake dealing with a real issue.... I (will give) short comments as I go through the work and at the end I (will) write a more detailed comment which I was sure was clear for the student to understand'. This suggests a type of formal recital of the process

that the tutor, in retrospect, imagines she adopts, but is not necessarily reflected in her practice. Her failure to consider any need for balance in her critiques, or to positively motivate her students, characterises her understanding of feedback more as 'error spotting' than developing the writer's skills.

Tutor F awarded herself 84% on this section, which was increased to 87% by her supervisor. Her initial justifications of this mark show an awareness of the need to balance her comments between positive and negative feedback:

> 'My feedback was detailed, but I'm not sure that I was able to maintain a very good balance of praise and criticism. My comments on the Field Research were largely aimed at guiding students on which aspects of their drafts needed to be improved and how. I found it very difficult to provide positive comments throughout (especially where these weren't always justified)'. ...'I, therefore, usually tried to offer a few positive comments in my summary at the end of each draft. Having read through my feedback, though, I feel that I could have offered a little more positive reinforcement and encouragement to those students who didn't perform exceptionally well'.

This tutor's reflective skills, her earnestness in seeking to attain a balance, in order not to discourage her students, reveals an uncertainty, a hesitancy and a humility that is not present in any of the other tutors' self-assessments. Her internalisation of the theory underlying feedback is evident in her appreciation of the difficulties of providing effective critiques. Her overall mark for the Teaching Legal Skills course was the highest in the class: 89%.

As regards the self-assessment exercise, Tutors A, C and F underrated their scores, while Tutors B, D and E awarded themselves higher marks than their supervisors did on the feedback aspect of the course. It was anticipated that there might be a correlation between students who are successful academically, and those who assess themselves accurately, because academically successful students are more likely to be strategic learners who have been able to internalise assessment criteria.

Applying this to the tutors, Tutors B and D, whose self-assessments were inaccurate did have academic results in their final year that were significantly lower than those of the other tutors, but Tutor E although academically successful, did not seem to have successfully internalised the assessment criteria for this aspect of Teaching Legal Skills.

The tutors' explanations, justifying the mark they awarded themselves, provide an insight into what each tutor considered her main role to be, in giving feedback. It is here that their perceptions of what is required are succinctly expressed, revealing their understanding and their misdirection in some cases.

4.5 Tutors' responses to my feedback questionnaire

At the conclusion of the Teaching Legal Skills course, each tutor was asked to complete, at home, an eight-page questionnaire, for the purposes of this study.   My objective was to obtain a sense of the tutors' perceptions of the feedback process.   All forms were completed and returned (Appendix 5).

Questions relate to: the tutor's personal language history; their understanding and experience of 'feedback on legal writing'; their ideas about the main purposes of feedback, their prior expectations about giving written feedback, and then their experience of carrying out that task.
Other sections of the form focus on 'process writing', on diagnosing writing problems in student work, holding writing conferences, tutors' own legal writing and the relationship between grading papers and giving feedback.

After reviewing the responses of the six tutors to questions related to feedback, it appeared that most of the tutors (four out of five- one tutor misinterpreted question 4) had received only 'minimal' or 'one word comments' on assignments or tests throughout their tertiary studies.   A fair degree of frustration and irritation was expressed about this: 'non-existent feedback- I was lucky to receive a one-word nonsensical comment', 'comments were often unclear or I could not understand them', 'I was irritated sometimes; I get even more cross now and I make sure that I ask them to explain their comment' (Question 4).   Ramsfield (2001) explains that tutors who have received feedback on their own work start off with 'an idea of what works and what doesn't'.   She incorporates this into her tutor training, by initially creating a chart, using their responses to build a basis for discussion.

When asked what their understanding of 'providing feedback on legal writing' had been at the beginning of the Teaching Legal Skills course, the tutors' responses ranged from: 'to provide guidelines on how to improve work; to explain misconceptions and point students in the right direction, to help with legal writing techniques (Tutor A); 'informing them/explaining why and how they got a mark, and how to rectify that in the future' (Tutor B); 'marking their work and telling then where they went wrong' (Tutor C); 'to inform them of their mistakes; I thought giving comments meant criticising them, correcting their mistakes' (Tutor D); "before Teaching Legal Skills I thought feedback was giving comments on things that had been badly done' (Tutor E); 'I understood it to be a brief comment on a mark- that no detail was expected; nor did I think it was necessary to justify a mark awarded with more than a single comment' (Tutor F).   The emphasis in these comments reflects the traditional view of negative critique, that feedback acts as a justification of a mark which has been awarded, and that one-word comments, in other words 'error-spotting', are what is expected by students.

Question 5 asks what they consider the main purposes of feedback are, and their responses reinforce that some tutors are misdirected in this area. These views give cause for concern, as they indicate that the tutors' training has not been entirely effective in communicating the aims of feedback.   Their understandings bear out the accuracy of Lindemann's statement that:

'Most of us (teachers) learned to comment the same way that we learned to teach: "by first surviving and then imitating the responses of teachers to our own work"' (1995:225).

Tutor B stated that the purposes were to 'justify marks given, indicate areas that need improvement and correct incorrect submissions'; and Tutor E stated: 'to show a rational connection between the student's work and the mark received'. This focus on justifying grades is disappointing, suggesting that they see their purpose as mainly evaluative or judging. Therefore they are more likely to limit their responses to purely 'text-based' comments and miss the broader writing issues (Berger, 2000:76). These perceptions are likely to cause the tutor to adopt a 'gatekeeping' role (Purves, 1984:260). Evaluative responses are more appropriate in an assessment of a final draft, as they do not aim to engage the writer in ongoing revision.

Tutor C also emphasised negative critique in answering: 'correcting mistakes, refining writing styles', and Tutor D stated: ' to inform as to whether they need to make changes, correct spelling and grammar errors, polish arguments'. These views appear to move toward seeing their role as diagnosing the students' errors and difficulties, regarding themselves as 'experts' or 'more experienced readers/critics' who are reading to improve the writer (Berger, 2000:75).

Almost predictably, the emphasis in the responses of Tutors A and F reflect a view that suggests 'coaching' the student writer. Tutor F states: 'Feedback that balances praise and criticism is useful in that it provides encouragement without completely demotivating them (students). It is beneficial in that it guides students and clearly indicates to them what is expected of them, where they went wrong and most important, how they can improve'. Tutor A comments: 'It helps writers improve their work and draws attention to their mistakes so that they can improve their writing skills'.

In question 7, tutors were asked what they had anticipated would be difficult about giving feedback. Their answers vary quite considerably and reveal underlying personal assumptions about the task. Some tutors expressed anxiety about their abilities: 'I am unsure how to give feedback as I had never received any feedback on my work' (Tutor C), 'I thought it would be very difficult to balance praise and criticism where I could find nothing to praise. Fortunately, though, this wasn't a major problem in practice. The other problem I anticipated and actually experienced was in how directive I should be in providing feedback without spoon-feeding students'.

Even the legal writing experts in Enquist's study (1999: 1159-62) are divided on the extent to which a teacher should revise and edit student writing. While some believe that giving examples, and showing the student how to edit her sentences was valuable, others preferred a more limited version of editing, characterised as: 'guidance is great; doing the student's work is not'. A third group stated that editing or revising is too time-consuming, shifts the

responsibility for doing the writer's work onto the teacher, and is not helpful or effective (1999:1161).

Anxiety about students' responses to her feedback comments was expressed by Tutor D (the only tutor whose comments on the first sample were found to be unjustifiably effusive): 'whether students would take comments personally. I was worried if they would get antagonistic- but actually they appreciate being told where they went wrong'. Tutor F also was concerned about 'having to make constructive recommendations as the students are first years and will remember the advice' – a comment that resonates with Jones's view of needing to make effective comments that 'serve the writer for the long term' (Enquist, 1999:1147). Tutor B stated her concern in commenting on 'good scripts, where there are no errors or omissions'- an unheard of category in student writing!

Questions 8 asked respondents whether they thought that they were able to achieve the purposes or goals of feedback that they had stated previously, and this was followed by question 9, which asked how they were able to do so, or why this was not possible.

Tutor C identified one-on-one writing conferences as the means through which she was best able to achieve the goals of feedback, which she had stated. Tutor D and Tutor B mentioned affective, personal issues: 'gain the respect of students - maintain the confidence of students, balance criticism with praise so that you don't "put them down" constantly' (Tutor D). This accords with an insightful comment made by Beaven that written responses should be based on a notion of:

> 'establishing a climate of trust, in which students feel free to explore...without fear that their thoughts will be attacked' (as cited in Lindemann, 1982:224).

Tutor B commented: 'knowing them personally, knowing their patterns of attendance', thereby suggesting that she responds to the writing behaviour, personalities and individual problems of the student writers.

In response to this question Tutors A, E and F described the styles, techniques or processes that they had developed to help them achieve their goals in giving feedback. Tutor A described how through 'giving clear and concise feedback', her students were 'receptive to the balance of positive and negative' feedback; Tutor E explained her technique of writing 'short points on scripts, and then setting out at the end exactly what was good, bad or needs to be improved'; and Tutor F found that 'giving very extensive feedback, finding the positive in every piece of work, making no negative comments unless she could suggest an improvement'; forming 'most feedback into questions, she intended to guide her students in the right direction, and not "spoon-feed" them'. Tutor F's mention of this fear of being too directive twice suggests it was a real concern for her. 'Modelling' is not a teaching method that law students generally would be familiar with, and this possibly explains

the tutor's reluctance to be too explicit in providing guidance to a student writer.

4.6 Comparative Data:

4.6.1 Tutors' Marking/Grading of Legal History test:

Although the main focus of the tutors' task throughout the Teaching Legal Skills course is that of small group teaching and of giving feedback on written assignments, tutors are occasionally required to assist with grading student assignments. For such an exercise, tutors are supplied with a detailed marking guide, a discussion is held with the lecturer who set the assignment, and a marking exercise is held. The focus in such an assessment is on knowledge of substantive law issues.

During the marking exercise, tutors grade one paper in class and record that mark. The paper is then exchanged with a peer who grades it independently. Pairs of tutors then compare their marks for the two papers. A class discussion follows, during which the pairs report on their marking, and disparities are discussed with the aim of achieving some degree of consistency.

Each tutor marked a set of tests at home. As the lecturer who had set the class test, I moderated all test scripts to assure a consistent standard. Comments with regard to the tutors' marking were made – but these must be considered in the light of being 'accurate', only in so far as they accord with my subjective expectations of the student's work in the test.
The following results emerged in relation to the tutors included in the feedback study. The maximum possible mark for the test was 50. Marks in brackets reflect my moderated mark.

Table E1: History Test Grading:

Tutors	Highest Mark	Lowest Mark	Mean Mark	Moderation
A	37	26.5	30	No changes
B	42	22 (17)	26	6 out of 9 were decreased
C	38 (40)	25.5	33 (34.5)	Every mark increased
D	38 (37)	27 (24)	30.85 (28)	Every mark decreased
E	28 (30.5)	17.5 (21.5)	22 (25)	4 out of 7 marks increased
F	33 (38.5)	13.5	26 (28.7)	6 out of 7 increased

No clear pattern relating to feedback and assessing emerges from this comparison. What emerged is that each set of marks was consistently

increased or decreased. It seems that the individual tutors marked on an internally consistent 'lower' or 'higher' rating scale to me. It had been expected that those tutors who had provided very detailed feedback on every assignment, might reflect a shared sense of appropriate grades for scripts with the moderator, but on these examples, only Tutor A's marks coincided with the moderator's views. It is interesting that Tutor B's and Tutor D's marks were decreased as their academic records (see below) indicate that they personally are not as academically successful as the other tutors. The internalisation of standards expected in tests may be a factor that contributes towards the success of the other tutors, or else it is possible that they as highly successful students have a subconscious interest in upholding high standards. It confirms that grading is a subjective exercise and bears no necessary relation to accurately diagnosing problems in written assignments.

4.6.2 Tutors' Academic Records:

Table F1: Tutors' Academic Results

Tutors	Matriculation Points	Average % 2000 (sem.1)	Average % 2000 (sem.2)	Degree Class	Teaching Legal Skills Mark
A	39	74.64	79.86	Cum laude	85
B	32	67.5	63.7	Completed	76
C	42	78.6	81.4	Summa cum laude	84
D	30	63.33	61.72	Completed	82
E	41	66.94	76.5	Completed	82
F	39	77.21	75.63	Cum laude	89

The cumulative average percentage for three of the six tutors had improved in their final year of study, after completing the entire Teaching Legal Skills course. It is impossible to determine whether participation in this course had a direct effect on their academic results, although each of the tutors expressed the view in the questionnaire (Appendix 5) that her writing skills had improved significantly through commenting on student writing. It seems that neither matriculation (school exit level) points, nor academic success is a reliable indicator of an ability to provide helpful feedback on writing. The academic success of Tutors A, C, E and F is reflected in their consistently accurate and specific diagnoses of content (substantive law) errors in student assignments. The number of comments which they make is always significantly high, and an examination of the type of errors which they identify shows that accuracy of the law (discipline knowledge) is their highest priority. However, Tutor C, the highest achiever in terms of personal academic success, often produced judgmental, terse comments, and edits that could be regarded as unhelpful, in the sense that too many errors are marked.

It is notable that Tutor B, who scored the lowest result for the Teaching Legal Skills course, consistently provided inadequate comment on student writing,

yet her matriculation points and her academic results did not represent the weakest set in the study.

4.7 Conclusions:

The ability of student tutors to give effective feedback depends to a large extent on their own understandings of the purposes and goals of the task. Their developing techniques appear to be based on their personal interpretations of what feedback is intended to achieve. This calls into question the effectiveness and pervasiveness of the tutor training. Theoretical perspectives related to feedback that do not seem to have been consistently assimilated or applied by all tutors were:

- the need to respond appropriately to first drafts as initial attempts at writing-in-process (Sommers, 1982);

- the importance of focussing comments to prompt revision, rather than mere polishing (Sommers, 1982);

- the emphasis on responding as a collaborative coach, instead of a judgmental 'error-spotter' (Horvath, 1984) ; and

- the focus on achieving a balance of positive and critical comments (Jamar, 2000).

It is likely that the training of the tutors in these areas was not sufficiently pervasive. It is also necessary however, to appreciate that the development of effective commenting techniques, based on multiple considerations, is a time-consuming and difficult task, requiring practice, feedback and ultimately, experience (Enquist, 1999). Assimilation of theoretical understandings alone will not ensure the rapid growth of a skill, or techniques, which are challenging even for experienced teachers (Baker, 2001). Problem identification, describing or explaining the problem as well as possible strategies for addressing it, and then conveying that in an appropriate written form, are all aspects of effective commenting that demand mastery.

The tone of tutor feedback, which significantly impacts on the effectiveness of feedback comments, as far as student writers are concerned, appears to be idiosyncratically determined. Individual personality factors, styles, and orientations seem to influence the way in which feedback is communicated to writers (Griffin, 1982:299). The student evaluations hint at this aspect, and the evaluation comments (or lack thereof) suggest that the tutorial group dynamics, i.e., what goes on in the classroom, may also interact to influence this affective domain. The tutors' own personal insecurities in their new roles as teachers may, in addition, complicate their task in finding a suitable voice, as an instructor.

Contrary to what the majority of views in the literature suggest, the student evaluations indicated that novice writers approved of large quantities of feedback (Enquist, 1996). (It is possible that student writers do not appreciate that although error identification is helpful on a first draft, it may not be

possible to prioritise, or absorb an excessive number of markings.) This feature appeared from the favourable responses of students to Tutors A and F, although the engaging tone of their comments could also explain the enthusiastic student evaluations.

The accuracy of Tutors A, C, E and F's diagnoses of content errors suggests that tutors' own academic success relates directly to their knowledge of discipline content and clearly enhances this aspect of their commenting. Deep analysis, or diagnosis of student writing problems was not evident in the tutors' comments, but this may be an unreasonable expectation of tutors at this stage or level of writing instruction (Ramsfield, 2001). It may demand more explicit and extended teaching, and more collaborative exercises in this area. In a general sense, the tutors have addressed some of the superficial discourse conventions in their edits and corrections of student writing. It is clear that their discipline knowledge empowers them to begin the process of initiating the novice writers into the discourse community, from a not too remote vantage point. Relating this to Williams's (1991) developmental model of legal writers, although the tutors may not yet be 'expert members' of the discourse community, their level of advancement positions them ahead of the novices, who can benefit from their 'insider knowledge.'

It is apparent that a system of closer supervision and monitoring of tutors' responses to student writing would enhance the programme (Ramsfield, 2001). Certain features that were evident in the samples, such as inadequate feedback, an inappropriate tone used in commenting, and an 'unevenness' in the quantity and quality of feedback provided across the samples of different tutors, require attention.

Chapter 5

Conclusions and Recommendations:

5 Introduction:

In this chapter, three main areas, which emerged from the analysis in Chapter 4, are the focus of the conclusions and the recommendations for improving the commenting practice of student tutors. These are:

(1) Conclusions relating to the strengths and weaknesses identified in the study of tutors' feedback samples;

(2) Recommendations arising from the conclusions, for improving the education and training of tutors;

(3) Recommendations on supervising and monitoring tutors' feedback responses.

5.1 Strengths and Weaknesses in the Tutors' Feedback Samples:

In order to address problem areas, it is necessary to first clarify the positive aspects that were apparent in the samples analysed. The ability of most tutors to accurately identify errors in substantive (law) content and to offer constructive guidance on those deficiencies was reassuring. In addition, their diligent attention to the task, evidenced by the vast quantities of feedback responses written by most tutors, reflects an earnest desire to develop helpful commenting techniques. Their generally effective use of marginal comments, including the use of many questions as comments, combined with summarising endnotes, indicates an appreciation of the techniques recommended by expert writing instructors. Most significantly, the majority of tutor comments communicate a sense of dialogic, personal engagement between the tutors and their student writers, despite some individual styles that obstruct the achieving of an appropriate tone in the feedback responses. The enthusiasm of the tutors to provide writing assistance is a pervasive feature in most samples.

The least successful aspects of the tutors' feedback that emerged from the analysis of the samples were based on misconceptions, related to the aims of effective commenting on first drafts of student writing. Their preoccupation with comments that 'justify a (notional) mark', and with correcting every mistake detected as they read through the paper, is grounded in a traditional view of teacher as 'arbiter of "right" answers'. It fails to take into account the new vision of writing as an ongoing and recursive process, in which the writing teacher acts in different roles at various stages: coaching, motivating revisions, and responding as a thoughtful reader, before the final assessment as 'judge' takes place (Purves, 1984:260-3).

If motivating revision of writing is the uppermost consideration when responding to first drafts, then comments that prescribe a particular solution for a text-specific problem, overly directive feedback, dogmatic 'commands', and prescriptive surface-level corrections would not appear as prominently in

feedback to students. Editing, particularly surface-level errors, without explaining the mistake, also fails to promote deep revision strategies in student writers. Even commendations of a general, vague nature are unhelpful to the writer unless they identify an effective technique, form of expression, or line of reasoning.

The tutors struggled to attain insightful diagnoses of underlying analytical problems and weaknesses in student writing patterns. In a personal communication, Baker (2001) comments that his tutors have difficulty assessing the 'deep structures' of student writing: 'the underlying strengths and weaknesses of a student's writing and the deep analytical and discursive norms that structure legal writing'. He adds that on average, this is 'a bit of a reach for most tutors'. It is somewhat reassuring to know that this problem is not unique to the tutors at UND. Ramsfield (2001) also, identifying weaknesses in the tutors' feedback comments at Georgetown Law School, lists the following weak areas: 'being too vague, especially in looking at analysis' and 'missing major problems in analysis.'

Both Baker (2001) and Ramsfield (2001) mention their tutors' apparent preoccupation with surface issues of 'sentence structure, syntax and grammar', or 'being too formalistic, correcting grammar and citation mistakes only, not analytical ones'. It seems that these errors are more obvious, more easily identified, and that may be the reason that tutors feel able to mark them with confidence. In a South African context, where basic academic literacy skills cannot be assumed to exist in all students, it may be valuable to provide tutors with some explicit instruction on grammatical forms and structures. This would prepare them to deal with specific language awareness and language development problems, which arise more commonly in South African students' legal writing, because of the significant presence of students whose first (or even second) language is not English.

An inappropriate tone was discerned in many of the tutors' comments on students' assignments. Whether it was a judgmental, blunt or terse tone, or whether it was overly effusive, many comments failed to achieve the right note, to 'convey a positive pedagogical alliance' (Baker, 2001). The ideal balance that he suggests is 'respect for the student, but also some authority by the tutor as a more experienced legal reader and writer'. The tone inherent in tutors' comments often affects the students' sense of whether or not a balance between positive commendations and critical comments, has been communicated. However, supervisors can more easily address this issue of balancing positive and negative feedback, by explicit, prescriptive directions to tutors, whereas the tone of an individual tutor's comments may reflect personality traits or individual idiosyncrasies that are difficult to eradicate. This could be addressed by an intervention, such as an interactive exercise, a role-play or workshop session, which would heighten tutors' self-awareness and sensitise them to this issue.

Certain more generalisable features of the six tutors' samples should be noted. I observed that first year students received qualitatively different levels of support from different tutors. It is inevitable that whenever a group of

instructors participate in commenting or assessment, there will always be variation, because of teachers' individual responses to writing (Griffin, 1982:297). However, in a situation where tutors are undergoing training, and their feedback can significantly affect a student's writing process and final product, it may be necessary to introduce a more structured system that aims to standardise or monitor tutor responses to a limited extent, for the benefit of students. Methods such as peer review (by another tutor) of comments, printed feedback forms, supervisors checking papers before they are returned to students, or at least random sample checks, could be considered. More prescriptive, minimal requirements could be stipulated by supervisors for each assignment, or a sample assignment, with examples of what are considered effective comments (prepared by the supervisors, or from a previous year's assignments) could be given to the tutors for each assignment. This would be appropriate in the light of the tutors' responses to the feedback questionnaire, where most answered that they had little personal experience of receiving feedback on their own work.

5.2 Recommendations for Improving Tutor Education:

As an initial step in addressing the problem areas identified above, changes in the education of the UND tutors could be introduced. Various strategies would include: improving their theoretical understandings, providing more samples of effective commenting, and introducing more collaborative practice on commenting.

Theoretical understandings, relating to the nature and function of writing and the aims of feedback, could be enhanced by presenting a broader perspective of current literature. A collection of readings, with related focus questions or worksheets attached, and given to tutors to read during the vacation preceding their tutoring course, would provide a framework of reference before the training workshop. Ramsfield (2001) describes a three-step system of training, in which the first stage involves discussions, drawing on tutors' own past experiences of feedback (schemata), to create a list of comments that work, and those that are not effective. Building on this, the list is refined after engagement with some theoretical readings on fundamental principles of commenting. Commenting terminology is introduced and a taxonomy is developed for different stages of writing, and for phrasing questions, both in marginal comments and in a synthesising end note.

The second step involves studying the feedback comments of others. Tutors respond to various samples from a 'library of comments', which help develop the tutors' list, started in the first stage of training. In the third stage, tutors look at sample critiques, discuss methods and techniques, and then comment on a paper themselves. A peer review of each other's comments is followed by further discussion. Then tutors comment on a second paper, which is reviewed and commented upon by the professor/supervisor. Commenting is practised on a third sample, and a peer review, together with the feedback on the comments from the professor completes the initial training.

This experiential process could be adapted for use at UND. It would be far more rigorous than the present training, and would necessitate extending the training workshop. It is far more time-consuming and labour-intensive than the training that the tutors undergo, but it clearly has many advantages. At present, very little practice is given before they begin commenting, despite the fact that most of them have not been exposed to much feedback on their own writing. Baker (2001) confirms that training should:

> 'necessarily include (their) actual engagement in writing comments to students under supervision whereby representative examples of their feedback are reviewed by instructors and/or head tutors or peers.'

Other practicable ways of improving the tutors' education would be: building up a library of resources that focus on feedback, such as theoretical readings, samples of comments written by experienced teachers on previous assignments, and developing detailed tutor memoranda, which clarify the purpose of each writing assignment, and specify the feedback priorities for each paper.

As regards addressing issues of student literacy, Siegel (1982:306-7) recommends holding one or two workshops on grammatical errors that are worth noting, while Greenbaum and Taylor (1981:174) suggest conducting research amongst the writing instructors to identify grammar problems around which instructive teaching workshops should be planned.

A system of 'pairing' different tutors for each assignment, to facilitate peer reviews of their feedback comments, would promote collaborative learning among the tutors, encourage reflective exchanges between them, and keep the supervisors' workload within reasonable bounds. Regular class discussions to 'keep the topic alive', feedback sessions on difficulties experienced during a phase when they are busy commenting on papers, and class exercises, when all tutors comment on one student paper, should be scheduled for the Teaching Legal Skills course, to ensure ongoing engagement at a reflective level.

5.3 Supervision and monitoring of tutors' feedback comments:

Although the overall impression of the shared capacities of tutors to write effective feedback comments and thereby assist in developing students' writing skills is a positive one, the negative features could, in several circumstances, have been pre-empted or avoided by closer personal supervision and monitoring of the tutors. Examples of: an insufficient or an excessive quantity of feedback, of a failure to record any commendatory comments, or of an inappropriate tone in tutors' responses ought to have been detected at an earlier stage.

At Georgetown Law School, when tutors begin commenting on an assignment, they are required to submit two papers for their supervisor to comment on initially (Ramsfield, 2001). Once these have been reviewed, the tutor makes the necessary adjustments to the feedback, and then finishes the

rest of the papers. Each paper is submitted to the professor for comment and approval before being returned to the students. This process requires an enormous time commitment to the task by supervisors, and thus it would not be practicable at UND Law School, where staff-student ratios are already so high.

A combination of peer reviews, and/or a system of 'senior tutors' (graduate students, who had been tutors in their final year of undergraduate study), together with supervisors, could review tutors' responses before they are returned to students. Such a system would alert supervisors to obvious problems. A 'check list' for the peer reviews, designed by the course supervisors, would ensure minimal compliance with certain prescriptive elements in the tutors' feedback, e.g., is there a summarising endnote that prioritises the three main areas that need revision? Although this could not guarantee responsive, focussed comments, it would achieve a degree of consistency in the tutors' efforts and establish normative 'baselines' in a formalistic way. Alternatively, a 'self-check' list for tutors to submit to their supervisor, monitoring the frequency and the character of their feedback comments, might assist in reinforcing the supervisor's expectations as well as promoting the development of self-assessment skills in the tutors.

Brief student evaluation forms for each assignment, requiring the student writers to record their responses to the tutors' feedback, would provide valuable information to supervisors, on an ongoing basis, and could be an effective assessment tool to document the tutors' progress in this area. In addition, this data could contribute to developing a body of knowledge on the much under-researched subject of how students perceive and use feedback.

Regular scheduled meetings between supervisors and tutors should be implemented as one of the course requirements. A personal meeting, at least once a month, when the tutors' portfolio could be briefly reviewed, and samples of feedback discussed, would emphasise the dialogic nature of the feedback cycle between supervisor and tutor. Formative feedback at regular intervals, from the supervisors, would have a positive effect on the developing practice of tutors and ultimately on student writing.

The implications of this enhanced training and monitoring are that a team of committed supervisors is essential to the success of the course. Using post-graduate students, who have already been trained as tutors in their final year of study, to create one or more 'Senior Tutors' would be a means of sharing the workload, as well as building additional teaching capacity.

In summary, the analysis of the tutors' feedback comments confirms the value, the viability and the possibility of improving the potential benefits for all the participants affected by a tutor training programme using fourth year students, to assist in developing the writing skills of first year law students. The study confirms that student tutors have the capacity, with appropriate training, support and supervision, to extend teaching resources, to develop effective commenting techniques and thereby assist in teaching legal writing.

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Appendices

Appendix 1: Deans' Questionnaire

Legal Writing: Survey of South African Law Schools   **June 2001**

Name of university:...

Campus:..

Approximate number of registered students at law school:.........................

Fulltime, undergraduate:.............   Part-time:.............

Postgraduate (full/part time students):...........................

Approximate number of staff members:.......................

Full time, permanent staff:.................   Part-time:.............

1.   What, if any, are the current concerns about student writing at your law school?

....
....
....
....
....
....

2.   At entrance level, (first semester of first year) how would you characterise the writing skills of your average law student? [tick the most appropriate description]

Basic (weak) communicative skills
Acceptable writing skills
Very competent writing skills
Excellent writing skills

3.   Do you think that the teaching of legal writing should be included in the LLB curriculum?   Please explain your answer.

....
....
....
....

4a. Have lecturers' concerns about student literacy and writing been explicitly addressed through any curricular innovations? If yes, please elaborate.

....
....
....
....
....
....

4b. Does legal writing form an integral part of any substantive law courses at your law school? If yes, please elaborate.

....
....
....
....
....
....

5. Who do you think should undertake the teaching of writing skills to law students?

....
....
....

6. At what level (year of study) would you consider it appropriate to teach legal writing skills to students?

....
....
....

7. What do you consider to be obstacles/ constraints to teaching legal writing in the LLB curriculum?
....
....
....
....

8. At exit level (graduation from the degree) how would you characterise the writing competency of an average law student at your law school? [tick the most appropriate description]

Basic (weak) communicative skills
Acceptable writing skills
Very competent writing skills
Excellent writing skills

Appendix 2a

Extracts from Northeastern University Law School Advanced Legal Practice Manual

NORTHEASTERN UNIVERSITY SCHOOL OF LAW LEGAL PRACTICE

TA TRAINING, DIVERSITY TRAINING, MENTORS, TA BUDDY SYSTEM, AND OTHER SUPPORT SERVICES

GOALS OF TA TRAINING

1. To provide you with a theory about the TA/student relationship, its combination of instructor/student, peer/peer, mentor/mentee, coach/player, reader/writer, advisor/advisee, and evaluator/student. We list this relationship first because we believe that the quality of the relationship between TA and student is the most important predictor of student success.

2. To provide you with a theory of feedback on student work, to emphasize that you are not an editor of student writing but a reader specialized in constructive comment designed to improve analytical skills, knowledge of the conventions of legal discourse, and skills in effective written communication. Even though your feedback is designed to improve the student's analytical and communication skills, your feedback will be most helpful if you place yourself in the authentic role of a supervisor who needs the student's work in the context of ongoing litigation.

3. To provide you with a vocabulary and conceptual map for understanding the skills we are trying to teach students so that you can in turn use this vocabulary and map with students;

4. To provide you with opportunities to practice feedback skills and to receive comments on your feedback skills so that your feedback will grow increasingly sophisticated and helpful;

5. To provide you with a theory of small group instruction and collaborative group process to facilitate your leadership of Tuesday group meetings;

6. To provide you with models and opportunities to facilitate discussions about race, gender, and sexual orientation in TA group meetings;

7. To provide you with an agenda for Tuesday group meetings and exercises to use in group meetings;

8. To provide you with opportunities to practice and role play group meetings to boost your confidence and competence as a small group instructor;

NORTHEASTERN UNIVERSITY SCHOOL OF LAW
LEGAL PRACTICE

TA ASSIGNMENT 1 - FEEDBACK ON INTERVIEW SUMMARIES

I. FEEDBACK ON INTERVIEW SUMMARIES

IMPORTANCE OF FACTS

The first assignment is an interview summary which you should
review primarily for accuracy and completeness in reporting the facts.
To make this exercise meaningful, you should be prepared to give
illustrations of how a missing or misstated fact might alter the legal
analysis. This will also help you to avoid what might appear to be
nit-picking.

Errors. Misstating facts is a serious problem, usually
reflecting both a failure to listen carefully - to concentrate - and
the human tendency to fill in the gaps on the basis of stereotypes and
expectancies. Every year, some students report that Kenny Lewis is
black. Every year, some advocates insist that Habitat had actual
notice of the string of purse snatchings and mailbox break-ins. It is
never too early to emphasize the necessity of rigorous accuracy and to
reward careful listening.

Specificity. Another kind of error is inaccuracy which occurs
because a writer has generalized rather than recorded the specific.
For example, it would be far better for the student to identify the
actual crimes that had been committed at Habitat and in the
neighborhood, e.g., attempted break-in into mail box, purse-snatchings
etc. rather than simply say that there had been a recent increase in
crimes.

Omissions. It is almost impossible, even for a skilled and
experienced advocate, to be sure at an initial interview what facts
may eventually be the most critical. This uncertainty arises because
of the interplay between legal and factual research in the formulation
of issues and analysis. Sound practice, therefore, errs on the side
of over-inclusion. It is hard to predict which significant facts may
be mis-stated or omitted. But suppose that the summary failed to
mention the Habitat had hired Kenny Lewis as a landscape worker and
had given him indirect access to the masterkeys kept in the office.
Such an omission would potentially result in overlooking the relevancy
of cases involving masterkeys or cases involving duty to supervise
employees. Or suppose that the summary fails to mention that the
masterkeys were allegedly non-duplicable. This omission, while
perhaps slightly less serious, could result in an erroneous perception
about the reasonableness of Habitat's precautions.

Appendix 2b

Extracts from Georgetown University Teaching Fellows Manual

LESSON PLAN

1. Reminder: Please remember Writing Process Conferences begin this week, so please bring your completed chart to the conference.

2. Today we have two major areas to cover: the analytical concept of statutory interpretation, and the formal requirements of the Client Letter. The purpose of today's class is to assist you in connecting analysis to format in preparation for drafting the client letter.

3. Keep in mind that lawyers write several kinds of letters, all of which fall along a spectrum between informative and persuasive:

> Informative (status of case, new attorney)
> Persuasive (settlement, dunning)

Where does this one fall? Informative. The purpose of this client letter is to inform Mrs. Pernitz of her status and to predict the possible outcome. Therefore we will use the most formal requirements for an opinion letter (you will depart from these according to the purpose as it falls on the spectrum).

3. From R&R, you discovered the parts to a formal opinion letter: 1) heading, 2) salutation, 3) opening or introduction, 4) summary of facts, 5) conclusion, 6) explanation, 7) prediction, 8) recommendation, 9) specific directive, 10) closing.

> Normally, those fall in that order, as you can see from the examples in CM, pp. 95-100.

4. Easy enough on the surface, but how does the lawyer construct an effective letter? What does Ocampo say? What does he suggest is most important for the lawyer to consider?

> a. Writer and audience.
> b. Giving the Client bad news.
> c. Providing an opinion rather than a prediction.
> d. Giving strategic advice.

> What about the opinion v. prediction? Which is more important? What is the difference? How does it apply here?

> A subtle difference; CYA regardless, but prediction may be too strong. Answer the client's question but be careful not to imply you are absolutely right, or to appropriate the decision from the client, which violates Code of Ethics.

5. Make sure your letter contains all ten R&R parts, but now tell me in which of those lies the focus? In which the answer?

<u>Week 4</u>   Teaching Through Commenting; First v. Second Drafts
9/16

     <u>Due</u>:   Brooke K. Horvath, "The Components of Written Response: A
               Practical Synthesis of Current Views"
               Lesson Plan for Workshop #4
               Research Project #2

     Commenting on the Opinion Letter: Content, Organization, Point of View,
     Style/Grammar and Mechanics

     Taking each student to the next level

            *   *   *

     Planning Workshop #5 (Secondary Sources)
     Final Thoughts on Workshop #4

     Workshop reminder:
     Collect CFE.
     Give RP #2.

UNIT 2: OBJECTIVE WRITING: THE OFFICE MEMORANDUM

     A.   <u>The Single-Issue Memo</u>

<u>Week 5</u>
9/23   Teaching Case Synthesis and Analogical Reasoning

     DUE: Lesson Plan for Workshop #5
           Memo A Research

     Commenting on the second draft with an eye toward Memo A

     Prewriting: Memo A

            *   *   *

     Planning Workshop #6 (Updating the law)
     Final Thoughts on Workshop #5

     Workshop reminder:
     Collect RP #2.
     Return CFE with comments.

Appendix 3

Tutor Evaluation Questionnaire

UNIVERSITY OF NATAL-DURBAN - SCHOOL OF LAW
FOUNDATIONS OF SA LAW: SECOND SEMESTER

2000 TUTOR EVALUATION FORM

NAME OF TUTOR_____

YOUR NAME_____

Do you want this evaluation to be confidential? ....   yes [ ] no [ ]

1. Was your Tutor <u>helpful</u>? ....yes [ ]   no [ ]   mixed [ ]

In what way was your tutor most and least helpful to you? Please indicate both aspects if possible:

		YES	NO	MIXED
2a	Was your Tutor knowledgeable about / able to explain <u>assignments</u> clearly?	[ ]	[ ]	[ ]
b.	Was your Tutor knowledgeable about / able to explain <u>substantive law</u> clearly?	[ ]	[ ]	[ ]
c.	Was your Tutor knowledgeable about /able to explain <u>legal skills</u> clearly?	[ ]	[ ]	[ ]
3.	Was your Tutor <u>available</u> often enough, particularly at convenient times?	[ ]	[ ]	[ ]
4.	. Did your Tutor seem <u>interested</u> in:	[ ]	[ ]	[ ]
	a. You	[ ]	[ ]	[ ]
	b. The Group	[ ]	[ ]	[ ]
	c. Foundations of SA Law	[ ]	[ ]	[ ]
	d. Being a Tutor	[ ]	[ ]	[ ]
5a.	Were the Tutorials helpful to you?	[ ]	[ ]	[ ]
b.	Was the mix of teaching formats, e.g. discussion, pair work, comparing preparation, appropriate?	[ ]	[ ]	[ ]
c.	Was the Tutor an effective facilitator of group discussion?	[ ]	[ ]	[ ]
d.	Were the group dynamics in your Tutorial good?	[ ]	[ ]	[ ]

How could the Group Meetings be improved?

....
....
....
....
....
....

6.	Did your Tutor respond to your concerns, suggestions, and criticisms?	[ ]	[ ]	[ ]
7a.	Was your Tutor sensitive to multicultural issues in your group?	[ ]	[ ]	[ ]
b.	Was your Tutor effective in talking with the group about diversity?	[ ]	[ ]	[ ]
c.	Describe any instances where the Tutor did not seem sensitive or appeared biased.			
8a.	Did you have any conferences with your tutor while you	[ ]	[ ]	

were working on an assignment?

b. Did you have feedback conferences with your tutor   [ ]   [ ]
    whenever work was returned to you?

c. Were these <u>work-in-progress conferences</u> with your Tutor   [ ]   [ ]   [ ]
    helpful?

d. Were <u>feedback conferences,</u> (after work was marked) with   [ ]   [ ]   [ ]
    your Tutor helpful?

e. How many individual meetings did you have with your
    Tutor?____

f. If you did not meet with your tutor what were the reasons for
    this?

    ....
    ....

g. How could the individual meetings be improved, e.g. your
    preparation, Tutor preparation?

    ....
    ....

9. In each section below (a, b, c, d, e, and f) please tick the
    ONE phrase that applies to your <u>Tutor's comments</u> on your
    written work:

a. Right mix of positive encouragement and critical comments   [ ]
    Overly critical   [ ]
    Not sufficiently critical   [ ]

b. Usually very clear   [ ]
    Reasonably clear   [ ]
    Sometimes a little confusing   [ ]
    Often confusing   [ ]
                                                                 [ ]
c. Thorough and detailed   [ ]
    Limited but helpful   [ ]
    Insufficient   [ ]
    Overly extensive   [ ]
                                                                 [ ]
d. Extremely helpful   [ ]
    Gave me an idea of what was expected   [ ]
    Could have been more helpful   [ ]
    Too directive, too much editing   [ ]
                                                                 [ ]
e. Gave me an overview of my major analysis and writing   [ ]
    problems
     Gave me a partial overview   [ ]
     Did not give me an overview   [ ]
                                                                 [ ]
f. Feedback was timely   [ ]
    Feedback was late   [ ]

10. Any specific suggestions you could make concerning your tutor's feedback?

    ....
    ....

11. Please tick the word which describes your Tutor's ability to help you learn <u>legal analysis and writing</u>:

[ ] outstanding   [ ] excellent [ ] very good   [ ] good   [ ] fair   [ ] poor

12. What is your <u>overall assessment of your Tutor's performance</u>?

[ ] outstanding   [ ] excellent [ ] very good   [ ] good   [ ] fair   [ ] poor

13. What is your <u>overall evaluation of the Tutorials</u>?

[ ] outstanding   [ ] excellent [ ] very good   [ ] good   [ ] fair   [ ] poor

14. General Comments on your Tutor's performance and the Tutorial System in Foundations of SA Law

Appendix 4

Tutors' Self Assessment Form

[Spaces left open for responses and font size have been reduced, in order to reduce the size of the document for inclusion here.]

TEACHING LEGAL SKILLS 2000
SELF-ASSESSMENT FORM: SECOND SEMESTER

Instructions: For each of the four course outcomes please assign yourself what you think is the appropriate mark for your work this semester. Below the mark please give the reasons you think this is the appropriate mark. Attach additional pages if needed for your explanation.

OUTCOME 1: (35% of semester mark)

How successful were you in effectively planning for and teaching a one period tutorial each week?

Mark_____% (out of 100%)

Reasons for this mark:

OUTCOME 2: (35% of semester mark)

Did you give students effective feedback on their written work both through written comments and in one-on-one conferences with your students?

MARK _____% (35% of semester mark)

Reasons:

OUTCOME 3: (10% of semester mark)

How successful were you in reflecting on multicultural and gender issues in your class and the curriculum?

MARK: _____% (out of 10% of the semester mark)

Reasons:

OUTCOME 4: (20% of the semester mark)

How successful was your preparation for and participation in the Teaching Legal Skills classes?

MARK: _____%

Reasons:

Appendix 5:

Tutors' Questionnaire on Legal Writing

[Spacing and font size reduced for inclusion here]

Teaching Legal Skills

Please complete the following questionnaire as fully and as candidly as you can. It will be used to assist me in completing my research into Tutors and Feedback on Legal Writing. I appreciate the time you have put into the course as well as your cooperation with my research.

1. What is your home language?

2. What other languages do you speak?

3.. When you first began the Teaching Legal Skills course in February 2000, what was your understanding of 'providing feedback on legal writing' to students?

4. What had been your own experience of receiving 'feedback' on your work, during your tertiary studies?

5. What do you consider to be the main purposes of giving feedback to students on their writing?

6. At the beginning of TLS what did you anticipate would be easy about giving feedback?

7. What difficulties (if any) did you anticipate about giving feedback to students?

8. Do you think that you personally were able to achieve the purposes or goals of feedback (see question 5) which you mentioned above?

8a. How were you able to do this? and why was it possible to achieve these goals, or why not?

Process Writing:

9. At the beginning of the year, what were your thoughts on first and final drafts of written exercises?

10. What do you think about them now, at the end of the year?

11. Do you have any particular comments to make about two drafts of assignments for first year students?

Diagnosing Writing problems:

12. During this year you have had to provide feedback to your students on their writing;

Please describe your experience in relation to:
1.   What problems with writing were easy to diagnose?
2.   What did you find difficult to diagnose?
3.   What would you say were first year students' most obvious or common problems with legal writing?
4.   Which writing problems did you think you were able to improve on with your students?
5.   Were there writing problems with which you felt you were unable to assist students?

Please explain or elaborate on these:
6.   How could you have been better prepared to give feedback on legal writing?

Writing Conferences:

13.   What differences are there, in your own experience, between giving written feedback on student writing, and oral feedback at a writing conference?

14.   What is your personal opinion about writing conferences?

15.   Typically, in your experience, which type of student attended writing conferences?

16.   What benefits did you discern for the student, from writing conferences?

17.   Was there any discernible improvement in the work of students who attended writing conferences? If so, please explain giving examples:

Your own legal writing:

18.   In your view, what are the essential characteristics of effective legal writing?

19.   At the beginning of this year, how would you have described your own legal writing skills?

19.b. How do you feel about your legal writing skills now? If there has been some change, please explain what it is:

20.   What courses have you studied during your LLB degree/undergraduate degree that have had an impact on your legal writing skills?

21.   Has there been any correlation between diagnosing writing problems of first year students and improvements in your own legal writing skills?   Please explain:

Marking and giving feedback to students:

22.   What are the uppermost thoughts in your mind that influence you when awarding marks on student assignments?

23.   Within what range of marks do you normally mark? Explain your reasons.

24.   Is there any interrelationship, in your view, between giving feedback comments on an assignment and having to grade the paper for a mark?

25.   Has you experience of marking student papers changed your own perceptions about assessments? Please explain:

Appendix 6A

THE OBSTACLES ENCOUNTERED IN ACCESSING JUSTICE:

There were various problems which the court personnel experience and notice, and which members of the community experience in accessing justice. They are as follows:

a) majority of the public are not educated enough to know how to approach the courts and the legal system and therefore prevent themselves from accessing justice. Furthermore, the level of language used in the Constitution and legislature, is too complicated for an ordinary person to understand. This makes understanding the justice system and accessing it more difficult.

b) Due to the stressful workload, a lot of the court personnel unintentionally adopt an uninterested attitude towards the public, giving them the impression that they are not willing to help them overcome their legal problems.

c) The courts are severely understaffed, that is: not enough magistrates, prosecutors, court orderly's and interpreters. This severely delays the hearing of cases and trial proceedings.

d) (The) are not enough courts in central locations, and as a result people find it difficult to get to court because of transportation problems and the further cost involved in getting to court.

No A matter is postponed, and accused is remanded

e) Attorneys remand matters very often because clients do not pay them their fees and this prolongs the process of seeing that justice is done. Furthermore, because of the low fees that Legal Aid attorneys get paid, a lack of job commitment from them results, and this results in the public not wanting to approach them for their services.

f) The police are incompetent in their duties because dockets and charge sheets are frequently lost, and this delays the justice process even further, preventing access to justice.

g) There is also a lack of understanding in the courts because of language barriers and the fact that many interpreters do not possess even the slightest amount of legal knowledge. *important observation. well done!*

These were the obstacles that most prevented people from accessing justice. The people that I interviewed were willing to help and were very honest in their responses, thus enabling me to obtain the information that I required. It was also evident that the

Appendix 6B

should have talked to your neighbours, relatives or friends instead.

I still had to go and interview people from the community. Well, this did not

go well at all. I tried pretending to be one of those people to whom justice

was denied so I could get them to talk. I approached about four of the people

who were waiting outside but none of them was eager to answer me. I guess

I was just too dressed up and they thought I was one of the court officials

because they kept saying that justice was only there for the rich. And most of

them were there to drop charges and take their matters out of the court

because they felt that they were being denied justice because they were poor.

To one who did not want to talk but was able to get her to say a bit who

complained about the legal fees, I asked her why she did not consider

applying for legal aid and said that she had never had of such a thing before.

I told her that now she knew and what she was planning to do about it then. *What is your solution here?*

She was like 'nothing, its' too late' and that there was nothing to do about it

then and that there was no use because she will be attending the case every

day of her life getting nowhere. But this was true because from what I saw

and heard, people would go there everyday cases being postponed everyday.

— What do you think about that country's justice system and perhaps (if possible) compare it with I.SA situation

— You have not given solutions to all the problems/deficiencies!
— You should try to structure your work accordingly — see P143

1. Clarity — your ideas are clearly expressed but lack the required content — fill in the gaps esp on your community interviews

2. Logic - your observation would have been more logical if eg you put in headings and sub-headings eg 1. Interview, put H community interviews, 12 Magistrate etc.

3 Thoroughness — you did not attempt to comment on your observations and your interviews. Discuss the problems and give solutions thereafter

Appendix 6C

Sandile Dlamini

He is my father's friend and works for the South Port police department. I interviewed him at my sister's birthday party (being a bit tipsy he remembered that I was a law student and so went on and on about the new constitution, so I decided that I might as well interview him !). His views on legal representation are two sided. Firstly an accused with an attorney has more advantage over the police. He believes that the six months training that the police receive is insufficient and therefore, if there is a case where there is an accused with a lawyer it is easier for them to get away because the representative may use his skills to manoeuver the situation to the accused advantage. On the other hand in cases like *Khanyile's* (I told him about it) he believes legal representation is necessary.

Mr Nyawose

He is a neighbor and in 1997 he was arrested of attempted rape. At the time of his arrest he was advised of his right to legal representation. However nothing more was said on the subject. He was kept in police custody so long that he decided to phone around and borrow money for a lawyer. He was eventually let out because there was not enough evidence. He says all the hassle would have been avoided had he had a lawyer. Therefore he suggests that courts should be more responsible in making sure that not only is a person advised on his rights to a lawyer ,but that he actually gets one(!)

I can see that you really put alot of effort into your assignment. Unfortunately your use of colloquial a loose language detracts greatly from your effort. Remember that this is a legal assignment. Formal language must be used & the style of writing must be formal as well. Do not write as if we were sitting down & having a conversation. Also try to avoid snide little asides.

Try to elaborate about the circumstances of the community in which you did your research. What is the economic profile of the community? Are the people well educated? what cultural groups do they belong to?

Please turn over

Appendix 6D

5 pages of work seems to be a tad little to present for 80 marks.

For one, you only interviewed one person in your community. Did you not know that 3 individuals had to be interviewed? You need to include great detail to work for your marks in this part of the report. For example tell me how you met them, describe their legal problems and interview(s) more people. This is unacceptable!

Also you need to give us the demographics of Port Shepstone (their income levels etc). Disclose more detail on the lawyers who serve the community, are they committed to providing legal representation?

Your interviews with the court officials are very sketchy. Did you draw up a questionnaire? If not why? If so why is it not included within the report? Describe your interview with the officials further. Do not just make bare statements without substantiating a point. Give reasons for your submissions and impressions.

Describe whether in criminal cases the courts are applying s 35(3)(f) and (g) of the constitution and whether it applies to what you observed.

Tell me what you learned from your research in detail. Describe the legal problems people experienced as what you learned from the interviews as a law student and how it has impacted on you as a law student and as an individual of this society.

Propose workable solutions which are practical to the problems RSA encounters especially with regard to financial constraints etc. Can the govt. actually work with these solutions and can they afford them? Also you only outline your solutions but what about the impediments to your solution & discuss whether or not your proposed

Appendix 6E

The only best solution is education.

Sarah you understand what is expected of you and you have made a great effort in this. However try to be more detailed and make sure that each statement you make has its justification or is qualified in a way. What is of great importance is how you feel or viewed the interviews and court proceedings (give us your opinion on the whole field research)   Good Luck!

WHAT I LEARNT.

During my whole research period I learnt so much about the whole issue of assess to justice. Most of the people I interviewed had civil problems e.g. divorce, employment and maintenance. What I learnt is the people in this particular community don't have a big problem in accessing justice it is just that they refuse or ignore the whole issue of Access to justice. They have this perception that the Court is not there to help them, but to see them in jail and thus they become totally ignorant with what the court has to offer.

The problems also learnt were;

a) Witness appearance in court. Most of the witnesses do not appear in court at all.

b) Dockets go missing thus causing a case to be postponed

c) Interpretation problem. Some interpreters do not interpret or find it difficult to interpret some law terms into another language

d) The shortage of staff problem, which makes work in court, go very slowly.

e) Financial problems

f) Lack of knowledge and professional standards for both the accused and the interpreter some times

g) Fear and luck of trust. The accused is afraid of trusting his or her own attorney

POSSIBLE SOLUTIONS

I think the most possible solution to most of these problems is to educate the public on issues about the crime. If people in the society will get to understand all about crime, then we will end up with less crime in the society and thus the court will not have to solve so many cases. *How is this possible ?*

Another solution is the court should make sure that all it's dockets are present and the witness or the accused does appear on the day of case hearing. In this way, postponements will reduce in court. *How can the court be more careful assure this?*

The court should also make sure the get interpreters who are qualified and know about the law. They should also have alternate resolutions with these interpreters. *what do you mean alternate*

They should also in all means try to explain to the public and educate them on what access to justice really means and the public should try not to ignore this. *Do you think this if implemented will be success*

What about financial problems and shortage of staff which contradicts each other?

Appendix 6F

B. COMMUNITY INTERVIEWS

Although the Indian community is normally more than willing to assist in any I found that they were somewhat reluctant to disclose information about their cases in court. How I obtained these interviews was through family connections and a female that works with me. I found it easier to talk to these people, as I knew them and they felt a little more comfortable to talk to me, as they knew me.

In the *first case*, the person had been involved in a civil case earlier this year. The person who I interviewed was Ron. Ron's father had died last year and had left him as the executor of his will and incidentally left everything that belonged to him to Ron. There were, however, members of Ron's father's family who wished to claim the assets his father had owned, for themselves. They attempted to contest the will and confronted an attorney in the area even though Ron had the will in his possession Ron was not aware of them attempting to claim the assets. Upon Ron receiving knowledge about this, he decided to obtain legal representation of his own to pursue the matter. The members of his father's family were informed that there actions were illegal as Ron was the executor of the will and that legal action would be taken against them if they continued to their actions. They therefore decided to drop their actions and Ron obtained his father's assets.

Ron, therefore has sufficient knowledge about legal procedure and has the finance available to obtain legal representation. All this legal procedure cost Ron about R4 000. But he says that all the people in his community have the money with which they can pursue legal matters, therefore they are just left alone. Due to Ron's success in his legal problem, he now trusts attorneys and sees their function as representing their clients to

Neat presentation well organised. Thank you.

① Why are you using the pronoun 'we'? This is your report so stick to 'I'

② What do you think Ian would have done if he could not afford an attorney of his own? Would he know where to go for help?

- And what if these people had actually contested the will ie if the matter did go to court and Ian had lost? Do you think he would still have been as happy with his attorney? Does he really understand legal procedure - does he understand that even though an attorney may do his best, he still might not win the case?

③ But isn't this done in our courts? What specifically is being done wrong and how do we improve it?

④ What exactly do they find unsatisfactory? What do they think their lawyer should be doing that he isn't? How often do they consult with the lawyer?
Are they being kept up-to-date with the investigation by the police?

⑤ What about her treatment while she was in the custody of the police? Was she informed of her due process rights (to remain silent, to legal rep?)

⑥ How do we provide them with an incentive to do better for their clients? You are making a good point here - just elaborate a little.

⑦ The use of these asterisks is not quite appropriate. Rather try to rephrase the sentence without them.

⑧ Why were the charges withdrawn? Was the accused represented?
If so, was his attorney prepared? This info would help the reader to see the full picture

⑨ The documentation provided by whom? Accused represented? etc...

⑩ Your use of diagrams is great - well done.